SUPREME COURT, U. S.

VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 23

PATRICIA WALDRON, ETC., PETITIONER,

vs.

CITIES SERVICE CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 3, 1966

CERTIORARI GRANTED JANUARY 16, 1967

SUPREME COURT OF THE UNITED STATES

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United States Court of Appeals

FOR THE SECOND CIRCUIT

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff-appellant,

—against—

CITIES SERVICE CO.,

Defendant-appellee.

APPENDIX TO BRIEF OF PLAINTIFF-APPELLANT

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United States Court of Appeals

FOR THE SECOND CIRCUIT

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff-appellant,

—against—

CITIES SERVICE CO.,

Defendant-appellee.

Statement Under Rule 15(b)

The action was commenced by the filing of a complaint on June 11, 1956. Named defendants were British Petroleum Co., Ltd., Cities Service Co., Socony Mobil Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), Gulf Oil Corp. and Texaco, Inc. On May 6, 1959, defendant Gulf Oil Corp. was dismissed by stipulation. An amended complaint was served and filed on July 12, 1963. No defendant has answered the complaint.

Depositions of plaintiff, Gerald B. Waldron, and his associates, Richard Nelson, James Zoes, James Bentley and Addison Brown were commenced on September 10, 1956 and completed on May 31, 1962. Pursuant to an order, dated July 10, 1956, plaintiff has been stayed from initiating discovery proceedings until five days after answers to the complaint are served.

On November 1, 1963, the defendants other than Cities Service Co. moved for summary judgment. This motion was denied in an opinion by Judge Herlands on June 23, 1964.

Statement Under Rule 15(b)

On April 8, 1960, defendant, Cities Service, moved for summary judgment dismissing the complaint as to it. A memorandum opinion by Judge William B. Herlands was entered on March 30, 1961 postponing the decision of the summary judgment motion pending appropriately supervised discovery pursuant to Rule 56(f). On May 8, 1963, plaintiff moved under Rule 56(f) for further documentary discovery and further oral examination of Cities Service. On June 23, 1964, an opinion by Judge Herlands again postponed Cities' motion for summary judgment and granted plaintiff additional discovery under Rule 56(f). Following the production of documents and depositions of three Cities' officers, Cities again renewed its motion for summary judgment in October 1964. Plaintiff again moved for additional discovery under Rule 56(f). On September 8, 1965, an opinion and order of Judge Herlands was filed which granted Cities' motion for summary judgment and denied plaintiff's motion for further discovery. Judgment for Cities was entered on September 14, 1965, and plaintiff's notice of appeal was filed on October 11, 1965.

On November 9, 1964, plaintiff, Gerald B. Waldron, died. His executrix, Patricia Waldron, was substituted as plaintiff on February 15, 1965.

(12122)

Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD.,
CITIES SERVICE CO.,
SOCONY MOBIL OIL CO., INC.,
STANDARD OIL CO. OF CALIFORNIA
STANDARD OIL CO. (NEW JERSEY),
TEXACO, INC.,

Defendants.

A motion for summary judgment in this action in favor of the defendant Cities Service Co. and against the plaintiff Patricial Waldron, as executrix of the last will and testament of Gerald B. Waldron, deceased, having been made by the defendant Cities Service Co., and having come on for hearing before the Court, Honorable William B. Herlands, District Judge, presiding, and argument having been heard and a decision having been duly rendered, and no just reason existing for the delay of the entry of this judgment,

Judgment

IT IS ORDERED AND ADJUDGED

that the plaintiff's complaint as against the defendant Cities Service Co. be dismissed on the merits and that the defendant Cities Service Co. recover from the plaintiff, Patricial Waldron, as executrix of the last will and testament of Gerald B. Waldron, deceased, its cost of this action.

Dated at New York, New York, this 13th day of September, 1965.

s/ WILLIAM B. HERLANDS
U.S.D.J.

JUDGMENT ENTERED 9-14-65
s/ JAMES E. VALECHE
Clerk

U.S. District Court
Filed
Sep 13 1965
S.D. of N.Y.

(12106)

Opinion, Dated September 8, 1965

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

#31600

Civil Action No. 110–223

[SAME TITLE]

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Opinion, Dated September 8, 1965

(12107)

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JAMES O. SULLIVAN, Esq. and
PAUL B. WELLS, Esq.,
Attorneys for Defendant Texaco Inc.,
Paul B. Wells, Esq., of Counsel.

HERLANDS, *District Judge:*

The court has before it two motions. The first is the renewal of a motion by defendant Cities Service Co.—initially made in 1960—for summary judgment under Rule 56(e) of the Federal Rules of Civil Procedure on the ground that plaintiff has failed, in his affidavits, to "set forth specific facts showing that there is a genuine issue for trial."

The second motion is by plaintiff* for further discovery, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

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* On February 9, 1965, pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, Patricia Waldron was substituted in her capacity as executrix of the last will and testament of the deceased plaintiff, Gerald B. Waldron, as plaintiff in this action.

Opinion, Dated September 8, 1965

The relevant facts were detailed and analyzed by this court at an earlier stage of this litigation. *Waldron* v. *British Petroleum Co.*, 231 F. Supp. 72 (S.D.N.Y. 1964). The facts will now be reiterated only to the extent necessary for the disposition of the motions at bar.

(12108)

Defendant Cities Service Co. (hereinafter Cities) first moved for summary judgment on April 8, 1960. In a memorandum opinion by this court, filed March 30, 1961, Cities' motion was adjourned for the purpose of enabling plaintiff to conduct limited pre-trial discovery. At that time, this court said:

> 1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.
>
> 2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events.
>
> 3. But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. This court has examined virtually every reported summary judgment decision rendered in this circuit since *Arnstein* v. *Porter*, 154 F.2d 464 (2d Cir. 1946), over one thousand in number. The rationale and philosophy of *Arnstein* v. *Porter* have not been attenuated by the subsequent course of decisions.
>
> 4. In view of (a) the surface complexity of the case, (b) the indirect law enforcement aspects

of even this private antitrust case, (c) the very extensive pre-trial examinations of the plaintiff already conducted by the defendants and the complete absence of any pre-trial examination of any defendant by the plaintiff—it would appear to be fair to postpone a decision of the summary judgment motion and to afford the plaintiff an opportunity to engage in appropriately supervised discovery and related pre-trial proceedings.

5. Because of plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record, so insubstantial, the plaintiff will not be (12109) given carte blanche authority to conduct untrammeled pre-trial proceedings. Such proceedings will be closely regulated. The usual Federal rule permitting fishing expeditions will be curtailed. A just and workable balance will be maintained between the respective interests of the opposing parties.

Following plaintiff's exhausting the discovery permitted pursuant to an order filed May 4, 1961,—limiting plaintiff to the examination of George H. Hill, Jr.—Cities again renewed its motion for summary judgment on May 13, 1963. At that time, plaintiff also moved for further discovery under Rule 56(f).

In deciding the 1963 renewal of Cities' motion for summary judgment, the court no longer was to be controlled by the rather restrictive interpretation of Rule 56 articulated by this circuit in *Arnstein* v. *Porter, supra.* Instead, the court was to be guided by two recent developments with respect to Rule 56, which had taken place since the March 30, 1961 decision herein.

The first development was the amendment to Rule 56(e), effective July 1, 1963. Although the central target of the amendment was to overcome a judicial gloss placed

upon Rule 56 in the Third Circuit which had impaired the utility of the summary judgment device, 6 Moore, Federal Practice 149 (1964 Supp.), the amendment was also aimed at the line of decisions in the Second Circuit, following *Arnstein* v. *Porter*, which reflected a (12110) strict policy toward the granting of summary judgment. See Wright, *Rule 56(e): A Case Study On The Need For Amending The Federal Rules*, 69 Harv. L. Rev. 839, 856 (1956); *United States* v. *Manufacturers Casualty Ins. Co.*, 158 F. Supp. 319, 321 (S.D.N.Y. 1957); *Vermont Structural Slate Co.* v. *Tatko Bros. Slate Co.*, 134 F. Supp. 4, 5 (N.D.N.Y. 1955), *aff'd* 233 F.2d 9 (2d Cir. 1956).

The second development was exemplified by the decision in *Dressler* v. *MV Sandpiper*, 331 F.2d 130 (2d Cir. 1964). In that case the court of appeals, in an opinion written by Judge Kaufman, undertook to resolve any doubt as to the effect of the 1963 amendment on the Second Circuit doctrine that had evolved from *Arnstein* v. *Porter*.

Judge Kaufman first made it clear that the amendment was aimed at changing the rule in this circuit as well as that of the Third Circuit. He then formulated, at 133, the criterion to be applied under the amendment in passing upon a motion for summary judgment:

> If the present case were to be decided under Civil Rule 56 as amended, it would thus seem clear that respondent's vague and conclusory allegations . . . would not be sufficient to forestall the award of summary judgment. The highly general assertions of . . . [the] answer . . . , buttressed by no *specific facts* or *evidentiary data*, are hardly the sort of *concrete particulars* which the amendment sought to require. [Emphasis added.]

Opinion, Dated September 8, 1965

(12111)

Recent cases i tnhis circuit which have reversed the granting of summary judgment have not manifested any deviation from the standards enunciated in *Dressler*. See *United States* v. *Fair & Co.*, 342 F.2d 383, 385 (2d Cir. 1965); *Miller* v. *General Outdoor Advertising Co.*, 337 F.2d 944, 948 (2d Cir. 1964). For example, the court stated in *Miller*, at 948:

> We do not, by our disposition of this case, weaken the force of our recent holdings that the summary judgment procedure should be used to pierce the allegations of pleadings and screen out sham issues of fact. See, e.g., Dressler v. MV Sandpiper. . . .

In an opinion, reported 231 F. Supp. at 72, this court, in order to enable plaintiff to meet, if possible, the new demands of Rule 56(e), further adjourned Cities' motion and granted plaintiff's motion for further discovery, permitting examination of Burl S. Watson, A. P. Frame, and J. E. Heston. In allowing this further discovery, the court stated, at 94:

> Since plaintiff must—if he is to oppose successfully Cities Service's motion for summary judgment—eventually submit "specific facts" which "would be admissible in evidence" [Rule 56(e)], plaintiff should be given another opportunity to conduct pretrial discovery.

Plaintiff has now completed the examinations of Watson, Frame and Heston. Cities again renews its motion for summary judgment.

The single issue before the court relating to Cities' motion for summary judgment, is whether plaintiff's dis-

covery has (12112) unearthed a "genuine issue [of fact] for trial" where nothing had existed before but "suspicion" and "gossamer inference drawn from the mere sequence of events."

The sequence of events to which plaintiff points as the basis of linking Cities with the alleged conspiracy is that in August, 1952, W. Alton Jones, president of Cities, allegedly expressing great interest in the prospects of reactivating Iranian Oil, flew to Iran to confer with Dr. M. Mossadegh, the prime minister of Iran. Then,

> in late September, 1952, Jones returned to the United States. He appeared to have suffered a complete change of heart and mind. He refused to have any further dealings with plaintiff. Ostensibly he lost all interest in purchasing or managing Iranian Oil [231 F. Supp. at 79-80].

Plaintiff attributes this "change of heart and mind" to the fact that somewhere between late August and early September, 1952, Cities joined the alleged conspiracy. Plaintiff earlier speculated that the alleged incentive for Cities to join the conspiracy was the promise of a contract between Cities and Gulf Oil Co. for oil from Kuwait, signed shortly after the above-noted events, or an opportunity advanced to Cities by the other defendants to participate in the oil consortium formed several years after the above-noted events.

The examinations of Watson, Frame and Heston have not produced any evidence from which a trier of fact would be permitted (12113) to infer that the Kuwait oil contract and participation by Cities in the consortium were consideration for Cities' allegedly dropping its interest in

Iranian oil and joining the alleged conspiracy against plaintiff. On the contrary, the record, as it now stands, conclusively establishes that both the Kuwait contract and participation in the consortium had no connection whatever with the course of Cities' conduct with regard to Iranian oil.

Plaintiff's major premise throughout this litigation with regard to Cities has been that, for some reason, Cities did a complete turnabout with respect to its interest in Iranian oil. Not only has the evidence thus far adduced demonstrated that the alleged turnabout was not motivated for the reasons originally advanced by plaintiff, but the evidence has brought into serious doubt the existence of the major premise itself—a turnabout or change in attitude. Rather, the evidence persuasively demonstrates a consistent course of conduct by Cities with regard to Iranian oil at all times.

Granting, however, arguendo, that there is an issue of fact as to whether Cities inexplicably changed its mind about Iranian Oil, such an issue is insufficient as a matter of law to constitute a "genuine issue for trial." From a possible inference that there was an unexplained change of mind on Cities' (12114) part, a trier of fact would not be permitted to draw the further inference that the change of mind was caused by a conspiratorial connection between Cities and the alleged co-conspirators.

The crucial facts which plaintiff must produce in order to survive Cities' motion for summary judgment are evidentiary data tending to prove that Cities became a party to the alleged conspiracy. These evidentiary data have not been forthcoming. Even the "gossamer inference" that existed in 1961 has become attenuated into nothingness as

a result of the pre-trial record developed during the last four years.

Plaintiff has been permitted to examine all of those persons, still living, who accompanied Jones to Iran in August, 1952 and who would be able to link Jones' activities at that time with the alleged conspiracy.

The examinations, however, have done no such thing. Plaintiff maintains, however, that—so long as there is the slightest question as to Jones' motive in allegedly abandoning his interest in Iranian oil—there is a material issue of fact remaining to be tried and, hence, that defendant's motion for summary judgment must be denied.

In so arguing, plaintiff relies heavily on *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464 (1962). Although (12115) *Poller* antedates the 1963 amendment to Rule 56(e) of the Federal Rules of Civil Procedure, it is unnecessary for the disposition of the present case to determine whether the result in *Poller* would have been the same after the 1963 amendment.

The facts in *Poller*, simplified for purposes of the present motion, are as follows. Plaintiff owned a broadcasting station in Milwaukee, affiliated with the Columbia Broadcasting System (CBS) network. Plaintiff claimed that, as part of a conspiracy to drive plaintiff out of the Milwaukee broadcasting market, CBS purchased the plaintiff's only competitor in Milwaukee and then cancelled its (CBS's) affiliation agreement with plaintiff (pursuant to an option clause in the affiliation agreement), ultimately causing plaintiff, no longer able to compete, to liquidate at distress prices.

The *only* question was whether CBS's purchase of plaintiff's competitor and cancellation of the affiliation agree-

ment was for an illegal purpose or motivated by legitimate business judgment. The facts of purchase, cancellation and their having directly caused injury to plaintiff were not disputed.

In holding that the granting of summary judgment was improper in *Poller,* the court stated, at 473:

> We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile (12116) witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of "even handed justice."

Plaintiff also relies upon *Cross* v. *United States,* 336 F.2d 43 (2d Cir. 1964), a decision which post-dates the 1963 amendment to Rule 56(e). In that case, as in Poller, the district court's granting of summary judgment was reversed as "particularly inappropriate where 'the inferences which the parties seek to have drawn deal with questions of motive, intent and subjective feelings and reactions.'" But in *Cross,* as in *Poller,* the *only* issue was to determine the purpose or motivation behind certain undisputed acts.

Plaintiff's argument (authority for which it relies upon *Poller, Cross,* and other similar cases) is essentially this: if plaintiff can raise an issue of fact as to whether a defendant who had been, independently of plaintiff, pursuing a course of conduct harmonious with that of plaintiff—and incidentally inconsistent with that of a conspiracy

directed against plaintiff—, reversed that course of conduct so that it then became inconsistent with plaintiff's interests and consistent with those of the conspiracy, then plaintiff has an action for conspiracy against that defendant which is immune against a motion for summary judgment.

(12117)

In all of those cases relied upon by plaintiff, however, where the credibility of witnesses was in issue, all that stood between plaintiff and a victorious verdict was a favorable determination by the fact trier of the sole issue of credibility.

However, in the present case, the issue of credibility (if there be one) is whether Cities did change its attitude toward Iranian oil. If, arguendo, the jury should find that there was a switch in Cities' attitude, such a finding—without further evidence linking Cities to the alleged conspiracy and the alleged injury to plaintiff—would be insufficient as a matter of law to support a verdict in plaintiff's favor.

On that evidence alone Cities would be entitled to a directed verdict at a trial. It is now entitled to summary judgment. *Schwartz* v. *Associated Musicians of Greater N.Y., Local 802*, 340 F.2d 228 (2d Cir. 1964); *Dressler* v. *MV Sandpiper, supra*; *Scolnick* v. *Lefkowitz*, 329 F.2d 716 (2d Cir.), *cert. denied*, 379 U.S. 825 (1964).

Although the court has determined that there is not a "genuine issue for trial" and that Cities is thus entitled to summary judgment, the court will enter summary judgment only "if appropriate." Fed. R. Civ. P. 56(e).

The next question, therefore, is whether summary judgment dismissing the complaint against Cities is to be entered (12118) now or whether Cities' motion for summary judgment is to be again postponed in order to grant plaintiff further discovery under Rule 56(f). See Kaplan, Amendments of the Federal Rules of Civil Procedure, 1961-1963 (II), 77 Harv. L. Rev. 801, 826-27 (1964).

In view of the dual policies of favoring private antitrust actions, see, *e.g., J. I. Case Co.* v. *Borak,* 377 U.S. 426, 432-33 (1964); *Monarch Life Ins. Co.* v. *Loyal Protective Life Ins. Co.,* 326 F.2d 841, 845, 846 n. 2 (2d Cir. 1963), *cert. denied,* 376 U.S. 952 (1964), and of protecting a plaintiff's right to his day in court, this court has heretofore granted plaintiff's motions under Rule 56(f). See the earlier decision of this court in this litigation, 231 F. Supp. at 94.

In so doing, the court has been equally aware of a countervailing policy against the undue harassment of a litigant through a spurious law suit. A defendant, no less than a plaintiff, is entitled to the equal protection of the court.

The case against Cities has gone far enough. More than five years have elapsed since Cities first made this motion for summary judgment. Plaintiff has had ample time and opportunity to discover and present "concrete particulars" demonstrating that there is a genuine issue for trial. At this late day plaintiff still cannot point to "specific facts or evidentiary data." (12119) *Dressler* v. *MV Sandpiper, supra* at 133. The court "is convinced to a legal certainty" that plaintiff has no case against Cities. *Cf. Arnold* v. *Troccoli,* 344 F.2d 842, 845 (2d Cir. 1965).

Opinion, Dated September 8, 1965

Defendant Cities' motion for summary judgment dismissing the complaint as to it is hereby granted.

Plaintiff's motion for further discovery under Rule 56(f) is hereby denied.

So ordered.

WILLIAM B. HERLANDS
U. S. D. J.

Dated: New York, N. Y.,
September 8, 1965.

Order, Dated July 9, 1964

(11918)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant Cities Service Company having moved, by Notice of Motion dated April 8, 1960, for an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in its favor dismissing plaintiff's complaint as against it; and plaintiff having cross-moved, by Notice of Motion dated May 8, 1963, for an Order, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, for the production of documents by and examination by oral deposition of defendant Cities Service Company in aid of plaintiff's opposition to said motion for summary judgment; it is hereby

Order, Dated July 9, 1964

ORDERED that said motion for summary judgment be, and the same hereby is, adjourned pending completion of the examination of defendant Cities Service Company by plaintiff pursuant to Rule 56(f) of the Federal Rules of Civil Procedure; and it is hereby further

ORDERED that said cross-motion for discovery be, (11919) and the same hereby is, granted, to the extent indicated in this Order; and it is hereby further

ORDERED that said examination commence on July 23, 1964, and continue from day to day until completed, except as the parties may otherwise agree to suit the convenience of the participants; and it is hereby further

ORDERED that said examination be limited and confined to the following subjects:

(a) The two issues defined in the Court's Order filed May 4, 1961;

(b) Conversations and communications, written or oral, from on or about June 11, 1952, to, on or about, October 1, 1952, between defendant Cities Service Company and any other defendant pertaining to:

(1) Waldron, Brown, Nelson, Bentley, Zoes, or Carter;

(2) The refining, marketing, distributing, producing or managing of Iranian oil;

(3) Plaintiff's proposed deal, contract, agreement or other arrangement with the Iranian Government;

(4) The subject of defendant Cities Service

Company's giving up, terminating, dropping or discontinuing negotiations with the Iranian Government in regard to any of the matters mentioned in item (2) *supra*;

(c) Conversations and communications, written or oral, from on or about June 11, 1952, to, on or about, November 1, 1952, between deponent and any other (11920) Cities Service Company official or employee pertaining to the subjects mentioned in items (1) through (4) of subparagraph (b) *supra*;

(d) Conversations and communications, written or oral, from on or about June 11, 1953, to, on or about, September 30, 1953, between defendant Cities Service Company and any other defendant pertaining to the subject of negotiations between plaintiff and Richfield Oil Corporation concerning the purchase of Iranian oil;

(e) Conversations and communications, written or oral, from on or about June 11, 1953, to, on or about, September 30, 1953, between deponent and any other official or employee of defendant Cities Service Company pertaining to the subject set out in subparagraph (d) *supra*;

and it is hereby further

ORDERED that said examination of defendant Cities Service Company be by Burl S. Watson, A. P. Frame, and J. E. Heston in that order, except as the parties may otherwise agree to suit the convenience of the participants; and it is hereby further

ORDERED that defendant Cities Service Company produce to plaintiff, ten days in advance of said examination,

copies of all documents not heretofore produced to plaintiff in the possession or control of defendant Cities Service Company which relate to the subjects upon which defendant Cities Service Company is to be examined as set forth in the fourth ordering (11921) paragraph *supra*; and it is hereby further

ORDERED that, within thirty (30) days following the conclusion of said examination, plaintiff and defendant Cities Service Company may submit to the Court any of such documents or portions of such depositions for final consideration of the pending motion.

/s/ WILLIAM B. HERLANDS
United States District Judge

Dated: New York, N.Y.
July 9, 1964

Opinion, Dated June 23, 1964

(11861)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

OPINION No. 30,096

Filed: June 23, 1964

APPEARANCES:

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(11861)

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and

Opinion, Dated June 23, 1964

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(11862)

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HERLANDS, *District Judge:*

Part I.*

The issues raised by defendants' motion to dismiss plaintiff's antitrust action and for summary judgment[1] have such far ranging implications that an extensive recital of the facts is unavoidably necessary.

Opinion, Dated June 23, 1964

FACTUAL BACKGROUND

The controversy at bar originates out of the dispute between Great Britain and Iran over the nationalization of Iranian oil. In March and April of 1951, the Iranian Parliament, under the leadership of Dr. Mossadegh, enacted legislation which nationalized the oil industry and thereby abrogated a concession held by the Anglo-Iranian Oil Company (hereinafter "AIOC") pursuant to a 1933 agreement with the (11863) Iranian Government.[2] Cmd. 8425, Explanatory Memorandum, pp. 3-4; Cmd. 8425, No. 1, pp. 9-19; Cmd. 8425, No. 10, pp. 29-31.[3]

The nationalization of the oil industry without provision for compensation to AIOC precipitated a serious international dispute between Iran and Great Britain. This eventually led to the severance of diplomatic relations between those two countries.

On May 18, 1951, the United States expressed deep concern about this dispute and urged the parties to solve the dispute through negotiation. State Dept. Bull., May 28, 1951, p. 851.

Thereafter, the United States made repeated attempts to effectuate a settlement.[4]

It was not until the fall of 1951 that plaintiff or any of his associates became interested in Iranian oil. In November of that year, Richard S. Nelson, who was at the time acting as an export manager for local firms in Denver, Colorado (Tr. 6478),[5] received a letter from James A. Raphael, an Iranian resident, asking him whether he knew anyone who would be interested in bartering sugar for oil. Tr. 6504.

Nelson, who had experience neither in the food nor

oil businesses, approached plaintiff Waldron in the hope that (11864) Waldron would have some connections in the food industry. Tr. 6506-6507.

Nelson and Waldron soon found it impracticable to effectuate such a barter. Instead, they became interested in the direct sale of oil.[6]

Some preliminary efforts were made to locate purchasers for the oil. Tr. 6605-6619. Much correspondence was exchanged with Raphael about purchasing the oil from Iran and transporting it to this country. See SONJ Exs. 15, 27A, 29, 71 for id.

Waldron and Nelson were aware of the delicate international problems posed by the Anglo-Iranian dispute. On January 28, 1952, Waldron wrote to United States Senator Johnson of Colorado to ascertain the attitude of the State Department with respect to the sale of Iranian oil in this country. SONJ Ex. W-115 for id.

Approximately one week later, Senator Johnson forwarded to Waldron, without comment, the reply of the State Department which, in relevant part, was as follows:

> "In the Department's opinion the British-Iranian oil controversy is basically a matter for negotiation between the two Governments directly concerned. Because of our vital interest in this matter the United States Government continues to use its influence toward finding a solution of this difficult problem. In line therewith, we welcome the initiative of the International Bank for Reconstruction and Development which is (11865) currently trying to work out a plan for settlement of the controversy and are extending every appropriate

assistance in such efforts as the Bank is making in this regard.

"The Department is of the opinion that the injection of any non-official individual, group or organization into this dispute might prejudice the ability of the parties concerned in reaching a satisfactory solution. Accordingly, the Department believes that non-official entities should refrain from getting involved in the dispute." SONJ Ex. 3 for id.

Knowledge of the State Department's attitude toward the Iranian problem in no way dissuaded the efforts of plaintiff to procure a contract for the sale of Iranian oil.[7] On February 13, 1952, Nelson sent a coded cablegram to Raphael containing the admittedly false information that he had cash purchasers for two million tons of oil. SONJ Ex. 37 for id.[8]

On February 19, 1952, Raphael communicated this false information to Dr. Abuzia, the authorized foreign sales representative for the National Iranian Oil Company (hereinafter "NIOC"). SONJ Ex. 39 for id.

At the time that these false representatives were being passed on to Iranian officials, representatives of the World Bank were in Tehran attempting to work out a solution to the Anglo-Iranian dispute. International Bank for Reconstruction and Development Press Release No. 285, April 3, 1952, p. 6.[9]

(11866)

From this point forward and continuing until the time that the contract was actually negotiated, the Waldron group and Raphael engaged in a correspondence that con-

tained patent misrepresentations and none-too-subtle hints of bribery.

Shortly after receiving the false information about the interested oil purchasers, NIOC (which was the Iranian Government instrumentality responsible for operating the nationalized oil industry) indicated to Raphael that it was interested in a more extensive deal encompassing a five-year contract for fourteen million tons of oil.

Raphael drafted an outline of such a contract and sent one copy to NIOC and the other to Nelson. See SONJ Exs. 8, 9, 40 for id.

On March 3, 1952, Nelson cabled Raphael the false information that the five-year, fourteen million-ton oil contract was acceptable to his "principals." SONJ Ex. B-1045 for id.[10]

When the World Bank's mission returned to Iran from London on March 5, "New complexities . . . devolped in regard to an Iranian proposal that Iran should have an option to sell directly on world markets substantial quantities of crude oil and products." International Bank for Reconstruction and Development Press Release No. 285, April 3, 1952, p. 8.[11]

(11867)

Several days after he had cabled Raphael in regard to the five-year contract, Nelson received a letter which injected a new and seemingly corruptive force into the negotiations. Raphael wrote Nelson to "Explain to your friend that you'll have to spend about *one per mille* [sic] to the persons who will assist us to realize signing this contract. You know Dick, in Iran for getting such a tremendous contract under way, one should pay left and right to the

officials who will have some say in the matter." SONJ Ex. 4 for id.

Thereafter, the correspondence continued in the same malodorous manner. On March 31, April 4 and April 8, 1952, additional false information was sent to Raphael. SONJ Exs. 64, 67 for id.; see SONJ Ex. 13 for id.[12]

On April 16 and May 1, 1952, Raphael reminded Nelson about the necessity of bringing enough money to meet the expenses referred to in his previous correspondence. SONJ Exs. 13, 83 for id.

At this point, the Waldron group decided that the time had come for Waldron and Nelson to fly to Iran and consummate the contract. After discussing the situation among themselves, the Waldron group decided that the term "oil" should be omitted in plaintiff's and Nelson's passport applications. Tr. 1114. The relevant portion of their letters to the State Department's Passport Agency read:

(11868)

> "My trip is for both business and pleasure, and I expect to visit several countries in Europe, as well as the Middle East. The business portion of my trip will be primarily concerned with making connections for obtaining sources of raw materials."

SONJ Exs. B-108, B-109 for id.

Waldron claims that, upon arrival in Iran, he and Nelson told Raphael that there was to be no bribery involved in procuring the contract. Tr. 699. However, they advised Raphael not to tell anyone about their interest in oil. Consequently, in responding to an inquiry from an official of the American Embassy, Raphael falsely replied

that Waldron and Nelson "were there on other business than oil." Tr. 1108-09.

Finally, on May 25, 1952, Waldron and Nelson obtained the highly desired contract.[13]

Upon their return to the United States, they informed Senator Johnson and the State Department of their activities. They stated that they believed their action to "be for the best interests of the United States, Iran and the entire Western world." SONJ Exs. N-113, W-114 for id.

Starting in June of 1952, plaintiff and his associates (which by this time included James E. Zoes, who had been brought into the group while Nelson and plaintiff were in Iran) made serious efforts to both implement and assign the contract. Zoes began to investigate the possibility of buying or renting tankers. Tr. 9109-11.[14]

(11869)

At about this time, an offer to sell the oil to some of the larger oil companies was made and quickly rejected. Tr. 8425-29, 8619.

On June 6, 1952, the Waldron group decided to concentrate their efforts on the First National Oil Company of Long Island (hereinafter "FNOC"). The negotiations with FNOC soon bogged down, however, because that company was reluctant to be linked publicly with Iranian oil (SONJ Ex. B-998 for id.) and because FNOC thought that the terms of the contract required substantial revision. See SONJ Ex. B-148 for id.

More important, however, was the fact that, on June 11, 1952, the Waldron group made an important contract with the Cities Service Company. See SONJ Ex. B-254 for id; Tr. 8842.[15]

Several meetings followed between Cities Service officials and several members of the Waldron group. These meetings culminated in an oral agreement by the terms of which (1) Waldron and Nelson were to attempt to procure an invitation for W. Alton Jones, president of Cities Service Company, from the Iranian Government, and (2) in the event that Waldron and Nelson succeeded in obtaining the invitation and Cities Service thereafter secured a contract with the Iranians to manage and operate the Iranian oil industry, the Waldron group was to (11870) receive as its compensation one or two cents per barrel of oil run through the Abadan refinery or taken as crude oil from the wells. Tr. 2186, 2223-24; SONJ Ex. W-343 for id.

In July, 1952, Waldron and Nelson again flew to Iran. They secured the coveted invitation in writing. Ex. B attached to Affid. of Samuel Lane, sworn to May 6, 1960. The invitation, dated July 26, 1952, written in French, was addressed to W. Alton Jones, president of Cities Service Company and signed by Dr. M. Mossadegh, the prime minister of Iran.[16]

In August, 1952, Jones and his entourage flew to Iran. Jones attempted to keep his trip to Iran highly secret. But soon after his arrival, word leaked out that he was there to negotiate with respect to Iranian oil.

Discovery of the nature and purpose of his visit caused excitement and anxiety in British oil and governmental circles. See, *e.g.*, N.Y. Times, Aug. 26, 1952, p. 3, col. 5; Business Week, Sept. 27, 1952, p. 29; Oil and Gas Journal, Sept. 29, 1952, pp. 155-56.

Despite threats of harassment and litigation, Jones dis-

played strong interest in Iranian oil. See N.Y. Times, Sept. 19, 1952, p. 8, col. 3.

In late September, 1952, Jones returned to the United States. He appeared to have suffered a complete change of (11871) heart and mind. He refused to have any further dealings with plaintiff. Ostensibly he lost all interest in purchasing or managing Iranian oil.[17]

On October 22, 1952, Iran severed diplomatic relations with Great Britain.[18]

On December 6, 1952, the State Department expressed its attitude toward the purchase of oil from Iran by American nationals or American firms, in a press release declaring:

> "The question of moving relatively small quantities of oil or oil products has seemed to us as of minor importance in comparison with the necessity to find some solution which could drive to the heart of the matter and result in resumption of large-scale movement of Iranian oil. . . .
>
> "Under present circumstances, this Government believes that the decision whether or not such purchases of oil from Iran should be made must be left to such individuals or firms as may be considering them, and to be determined upon their own judgment." State Dept. Bull., Dec. 15, 1952, p. 946.

In December of 1952, although plaintiff had still been unable to locate purchasers for the Iranian oil—allegedly because of defendants' conspiracy—NIOC extended the impending expiration date of its contract with plaintiff until June of 1953. SONJ Ex. W/N-557 for id.[19]

In January, 1953, the Sun Oil Company rejected an offer

for the sale of oil made by the Waldron group. SONJ Ex. C-669 for id.

(11872)

Finally, in June, 1953, the Waldron group attempted to sell the oil to the Richfield Oil Company. However, even before the group's effort could be thwarted by the alleged conspiracy, the June 30, 1953 deadline of the NIOC contract expired.[20]

GROUNDS OF DEFENDANTS' MOTION

The motions presently before the Court rest solely upon facts culled from the writings and sworn testimony of plaintiff and his associates and from official publications.[21]

Defendants have moved for summary judgment and to dismiss on the following grounds:

1. that plaintiff lacked the requisite "business or property" interest prescribed by § 4 of the Clayton Act;

2. that any injury to plaintiff's claimed "business or property" was indirect and secondary, and therefore cannot support an action under § 4 of the Clayton Act; and

3. that the Court should not lend its power to assist this plaintiff because his conduct and his oil contract were (a) contrary to the best interests of the United States, (b) contrary to United States foreign policy and (c) tainted by fraud and illegality and repugnant to public morality.[22]

Opinion, Dated June 23, 1964

WAS PLAINTIFF INJURED IN HIS BUSINESS OR PROPERTY?

Defendants contend that the undisputed facts demonstrate that plaintiff lacked the "business or property" interest (11873) requisite for an action under § 4 of the Clayton Act, 15 U.S.C. § 15.

The gist of plaintiff's counterargument is that he was or could have been in the "business" of dealing in Iranian oil and that defendants destroyed that business or prevented plaintiff from engaging in that business before it was soundly established.

Under § 4 of the Clayton Act, it is as unlawful to prevent a person from engaging in a business as it is to drive a person out of business. *Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co.*, 166 Fed. 254 (2d Cir. 1908); *Delaware Valley Marine Supply Co.* v. *American Tobacco Co.*, 184 F. Supp. 440, 443 (E.D. Pa. 1960), *aff'd*, 297 F.2d 199 (3d Cir. 1961), *cert. denied*, 369 U.S. 839 (1962); Timberlake, *The Legal Injury Requirements And Proof Of Damages In Treble Damage Actions Under The Antitrust Laws*, 30 Geo. Wash. L. Rev. 231, 233 n. 10 (1961).

The legal content of "business or property," for the purpose of § 4 of the Clayton Act, is flexible.

In the absence of a statutory specification of the attributes of "business or property," the courts have spelled out on an ad hoc basis the factual situations that measure up to the required showing of "business or property."

(11874)

Where, as here, a person alleges that he has been prevented from engaging in a business, he must show that he

had the intention and preparedness to engage in that business. See *Triangle Conduit & Cable Co.* v. *National Elec. Prods. Corp.*, 152 F.2d 398 (3d Cir. 1945); *Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co., supra.*

In determining whether a plaintiff has proved the requisite intention and preparedness, the courts have looked for varying combinations of the following typical elements:

1. The background and experience of plaintiff in his prospective business. See *Peller* v. *International Boxing Club*, 227 F.2d 593 (7th Cir. 1955); *Rossman* v. *Pullman Co.*, 15 F.Supp. 325 (S.D.N.Y. 1936);

2. Affirmative action on the part of plaintiff to engage in the proposed business. See *Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co., supra; Washington Professional Basketball Corp.* v. *National Basketball Ass'n*, 147 F.Supp. 154 (S.D.N.Y. 1956);

3. The ability of plaintiff to finance the business and the purchase of equipment and facilities necessary to engage in the business. See *Volasco Prods. Co.* v. *Lloyd A. Fry Roofing Co.*, 308 F.2d 383, 395-96 (6th Cir. 1962), *cert. denied*, 372 U.S. 907 (1963); *Deterjet Corp.* v. *United Aircraft Corp.*, 211 F.Supp. 348 (D. Del. 1962); *Pastor* v. *American Tel. & Tel. Co.*, 76 F.Supp. 781 (S.D.N.Y. 1940);

(11875)

4. The consummation of contracts by plaintiff. See *North Texas Producers Ass'n* v. *Young*, 308 F.2d 235 (5th Cir. 1962), *cert. denied*, 372 U.S. 929 (1963); *Peller* v. *International Boxing Club, supra.*

Plaintiff contends that he was attempting to engage in

the "oil business" as manifested by his activities in pursuit of various aspects of this business. He points to (a) his attempts to import and sell Iranian oil; (b) his financial interest in a prospective management contract between Cities Service and the Iranians; (c) his advantageous business relationship with NIOC; and (d) his endeavors to assign the NIOC contract. Plaintiff's position is that the aggregation of these features constitutes the requisite "business."

Plaintiff, agreeing that it is appropriate to analyze each of these four aspects separately (see Transcript of Argument of Motion, May 11, 1964, p. 209), claims that such an analysis will demonstrate that each aspect by itself meets the "business or property" requirement of the statute.

A.

Plaintiff argues that his possession of the NIOC contract constituted "business"; that he was in a position to act as a principal in importing and selling oil under that contract; and, that he would have successfully done so but for (11876) defendants' conspiratorial acts. To support his assertion that he had the necessary financial resources, he points to a letter of credit. SONJ Ex. W-284 for id. He insists that he made efforts to sell the oil obtainable under his NIOC contract but that prospective purchasers were frightened off by defendants. In brief, he submits that the record facts show that he was engaged as a principal in the business of importing and selling oil under and by virtue of his contract.

The actual evidence, however, shows that the letter of credit was illusory; that plaintiff did not have the requisite

knowledge, experience and financial resources to exploit and take advantage of the NIOC contract as a principal; and that no genuine issue of material fact exists as to the existence of a "business" in this aspect of the case.

One cannot enter the business of importing and selling Iranian oil without a substantial amount of capital. While it is true that plaintiff was successful in procuring a letter of credit, an examination of the letter of credit itself reveals (and plaintiff so admits) that the letter of credit was intended by the issuing banks to commit them to transmit funds only when prior to such transmittal the sums had been actually paid to them or adequate security had been provided. See SONJ Ex. W-284 for id.; Tr. 1954-55, 7088.

(11877)

The record conclusively shows that plaintiff and his associates did not have the requisite capital or other assets to implement either the letter of credit or the NIOC contract as principals.[23] At one point during the oral argument of this motion, plaintiff's counsel conceded the correctness of this proposition.[24]

Other than the letter of credit and the Waldron group's minimal expenses[25] (assuming the correctness of the $50,000 figure), plaintiff has failed to produce any evidence which would support a finding that he did, could or was willing to invest enough money to operate the alleged oil business successfully. On the contrary, there is substantial testimony proving that plaintiff and his associates did not want to risk any of their own money in this venture. Tr. 8659-62, 9077.

For this reason, plaintiff has failed to establish that he had a prospective "business," at least with respect to the business of importing and selling Iranian oil.

In finding no "business" within the meaning of § 4 of the Clayton Act, many cases have stressed the lack of the plaintiff's financial involvement and potential. In *American Banana Co.* v. *United Fruit Co.*, 166 Fed. 261, 264 (2d Cir. 1908), *aff'd*, 213 U.S. 347 (1909), the court noted: "It is not averred (11878) that the plaintiff invested any money in preparing to engage in any such independent business. . . . ." See also *Volasco Prods. Co.* v. *Lloyd A. Fry Roofing Co., supra.*

In *Pastor* v. *American Tel. & Tel.*, supra, where the court found no "business or property," emphasis was placed on the fact that plaintiff was never in a financial position to maintain a business nor did he ever have a promoter to give him funds with which he could maintain a business.

Conversely, where a plaintiff has demonstrated both his financial ability to enter into a business and his intention to do so, the courts have found the existence of "business" within the meaning of § 4 of the Clayton Act. See *Deterjet Corp.* v. *United Aircraft Corp., supra.*

B.

The second aspect of plaintiff's claim as to the existence of "business" relates to his expectancy in a possible Cities Service management contract with NIOC.

However, the expectancy is a non-existent but hoped-for contract—one that presumably was in some stage of negotiation but which aborted—lacks substantial attributes of existing economic control or power; and, hence, cannot be regarded as "business." *cf. Productive Inventions, Inc.* v. *Trico Prods. Corp.*, 224 F.2d 678 (2d Cir. 1955), *cert. denied*, 350 U.S. 936 (1956).

(11879)

The word "business" is a conclusory term. It covers a broad spectrum of rights, powers and privileges which, singly or collectively, has conventionally been labeled "business" for the purpose of § 4 of the Clayton Act. There must be some modicum of existing economic power or control. To some extent, this may be circular logic inasmuch as the term "business" is a conclusion rather than a reason. It is a conclusion justified, however, by the analogous factual patterns of other decided cases.

Plaintiff's attempt to create a "business" out of the incipient Cities Service-Iranian transaction is unsuccessful. In this instance, plaintiff's claimed "business" possesses all of the infirmities of plaintiff's alleged "business" of importing and selling oil and, in addition, does not have a specific, written contract on which to fall back.

It is dobutful indeed whether plaintiff had any binding arrangement with Cities Service. His situation is quite similar to that of the plaintiff in *Peller* v. *International Boxing Club, supra,* which the court there characterized as an "embryonic effort." *Id.* at 596. See also *Broadcasters, Inc.* v. *Morristown Broadcasting Corp.,* 185 F. Supp. 641 (D.N.J. 1960); *Image & Sound Service Corp.* v. *Altec Service Corp.,* 148 F. Supp. 237 (D. Mass. 1956).

(11880)

C.

A third aspect of plaintiff's claim as to the existence of a "business" relates to his advantageous relationship vis-à-vis Iranian oil. Plaintiff reasons that this situational position itself constituted an economic opportunity

which should be equated with a "business." The Court, however, finds that the existence of that advantageous relationship per se is not sufficiently substantial to amount to a "business." *Cf. Duff* v. *Kansas City Star Co.*, 299 F.2d 320 (8th Cir. 1962).

D.

The fourth and final aspect of plaintiff's claimed "business" relates to his right to assign his NIOC contract and his attempt to assign that contract to an oil company that had the facilities to import and handle the oil. Plaintiff submits that those facts should be equated with "business." Assuming *arguendo* the correctness of this contention, plaintiff's claimed "business" would not serve the purposes of § 4 of the Clayton Act, for reasons that will now be discussed in relation to another but concomitant Section 4 requirement, that of direct injury.

This concomitant statutory requirement is that the plaintiff be "injured in his business." Hence, further (11881) critical inquiry with regard to this particular phase of the matter involves a determination of whether there is an issue of fact regarding the "injury" received by plaintiff "in his business," assuming that plaintiff's right to assign the NIOC contract constituted "business."

Judicial gloss upon the statute has created a body of doctrine prescribing that the injury be direct and primary as contradistinguished from secondary, incidental, remote or indirect.[26] A critique of this dichotomy is outside the scope of this opinion. See Comment, *Should "Injury" In Treble Damage Suits be Redefined?*, 51 Nw. L. Rev. 141 (1956); Comment, *Third-Party Recovery For Injury To*

Economic Interests—A Common-Law Problem In Interpreting The Antitrust Laws, 21 U. Chi. L.Rev. 709 (1954); 69 Harv. L. Rev. 575 (1956); 101 U.Pa. L. Rev. 1071 (1953).

Like the flexible concept of "business or property," the companion concept of "injury" is neither defined by statute nor formularized by interpretive decisions. See *Productive Inventions, Inc.* v. *Trico Prods. Corp., supra,* at 680; *Harrison* v. *Paramount Pictures, Inc.,* 115 F. Supp. 312, 317 (E.D. Pa. 1953), *aff'd per curiam,* 211 F.2d 405 (3d Cir.), *cert. denied,* 348 U.S. 828 (1954).

While the cases do not form a string of pearls "A (11882) fairly general pattern has emerged from this concept." *Schwartz* v. *Broadcast Music Inc.,* 180 F. Supp. 322, 327 (S.D.N.Y. 1959).

The following types of plaintiffs have been held to be without standing to sue for treble damages under the antitrust laws:

1. A patent owner who licenses his patents to a manufacturer on a royalty basis, suing for loss of royalties on sales which would have been made but for the antitrust conduct of defendants. *Productive Inventions, Inc.* v. *Trico Prods. Corp., supra.*

2. Shareholders, officers and creditors of corporations, suing for diminuation in value of ownership, loss of earnings or impairment of corporate ability to pay, caused by the impact of antitrust conduct on the corporation. *Bookout* v. *Shine Chain Theatres, Inc.,* 253 F.2d 292 (2d Cir. 1958); *Martens* v. *Barrett,* 245 F.2d 844 (5th Cir. 1957); *Westmoreland Asbestos Co.* v. *Johns-*

Manville Corp., 30 F. Supp. 389 (S.D.N.Y. 1939), *aff'd per curiam*, 113 F.2d 114 (2d Cir. 1940).

3. Nonoperating motion picture landlords, suing for depreciation in market value of the property or loss of rents attributable to antitrust violations relating to the showing of pictures at the theatres operated by their lessees. (11883) *Melrose Realty Co.* v. *Loew's, Inc.*, 234 F.2d 518 (3d Cir.), *cert. denied*, 352 U.S. 890 (1956); *Skouras Theatres Corp.* v. *Radio-Keith-Orpheum Corp.*, 193 F. Supp. 401 (S.D.N.Y. 1961); *Harrison* v. *Paramount Pictures, Inc., supra.*

4. An insurance broker, suing for loss of income caused by a conspiracy to deprive the company which he represented of a particular contract. *Miley* v. *John Hancock Mut. Life Ins. Co.*, 148 F. Supp. 299 (D. Mass.), *aff'd*, 242 F.2d 758 (1st Cir.), *cert. denied*, 355 U.S. 828 (1957).

5. A supplier of raw materials, suing for loss of sales resulting from conduct restricting the business of its major customer. *Snow Crest Beverages, Inc.* v. *Recipe Foods, Inc.*, 147 F.Supp. 907 (D. Mass. 1956). But *cf. Karseal Corp.* v. *Richfield Oil Corp.*, 221 F.2d 358 (9th Cir. 1955).

6. Music composers, suing for loss of royalties due to the impact of antitrust conduct on ASCAP, their marketer and publicizer. *Schwartz* v. *Broadcast Music, Inc., supra.*

Defendants contend that the facts now before the Court are analogous to those in the above-mentioned cases. Contrariwise, plaintiff argues that the facts herein are more similar to those in a line of cases where plaintiffs—

who suffered loss of commissions attributable to antitrust violations on the part of their employer in one case and on the (11884) part of their employer's competitors in another—were held to have the standing to sue under § 4 of the Clayton Act. See *Vines* v. *General Outdoor Advertising Co.*, 171 F.2d 487 (2d Cir. 1948); *Roseland* v. *Phister Mfg. Co.*, 125 F.2d 417 (7th Cir. 1942); *McWhirter* v. *Monroe Calculating Mach. Co.*, 76 F. Supp. 456 (W.D. Mo. 1948).

The cases relied on by plaintiff are distinguishable, at least according to the rationale of the decisions. In all of them, the complainants were directly engaged in the sale of products or services in the line of commerce restrained by the alleged conspiracy. See Comment, 46 Calif. L. Rev. 447 (1958).

In the instant case, the line of commerce allegedly restrained was the Iranian oil business. Plaintiff himself was not in the "business" of importing and selling Iranian oil. He attempted to assign his oil contract to an oil company (FNOC). As a potential or actual assignor of his oil contract (assuming that such assignment constituted "business"), plaintiff would be injured only indirectly and incidentally by the alleged conspiracy. As an assignor, plaintiff would be no better off than others in an analogous position; such as, the patent licensor whose licensee (not the licensor) has been held to be directly injured; the landlord whose lessee (not the landlord) has been held to be directly injured; or (11885) the stockholder whose corporation (not the stockholder) has been held to be directly injured.

Consequently, as an assignor (potential or actual) of his oil contract, plaintiff would be injured only indirectly and

incidentally. For that reason, even if plaintiff's right to assign the NIOC contract constituted "business," plaintiff would have no standing to sue under § 4 of the Clayton Act.

The Court's analysis of the four component aspects of plaintiff's alleged "business" leads to the conclusion that plaintiff was not directly "injured" in his "business."

Plaintiff argues that, in this case, the four individual aspects of his "business", when integrated, have greater cumulative legal significance than when his rights are fragmented and separately considered; that is, the composite of plaintiff's rights and activities constitutes "business" within the purview of § 4. The Court disagrees.

Plaintiff's varied activities create only an aura of his being engaged in the oil "business." Closer scrutiny reveals nothing more than several disjointed efforts unaccompanied by the traditional indicia and risks characteristic of "business."

Plaintiff's lack of experience in the oil business, his inability to finance any type of going concern and his (11886) unwillingness to assume the responsibilities of operating a business conclusively demonstrate that plaintiff was not engaged in the oil "business." See *Volasco Prods. Co.* v. *Lloyd A. Fry Roofing Co., supra; Peller* v. *International Boxing Club, supra; Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co., supra.*

The above analysis would be dispositive of this issue if § 4 of the Clayton Act protected only a person injured in his "business." However, § 4 has a broader sweep. It provides that "any person who shall be injured in his business *or property* . . . may sue." (Emphasis added.)

The majority of cases cited by defendants do not advert to the distinction between "business" and "property," for the simple reason that that distinction was not in issue in those cases, as it is here.

The statute explicitly uses the words "business or property" in the disjunctive. Congress intended this distinction to be meaningful.[27] The word "property" has wider scope and is more extensive than the word "business." Less is required to prove "property" than to prove "business."

The statute does not set up a qualitative or quantitative test to determine the existence of "property." Nor does the statute contain a built-in definition.

(11887)

The word "property" is, in a sense, a conclusory term, i.e., an interest which the law protects. A determination whether plaintiff has "property" involves a value judgment as to whether that which plaintiff factually possesses should be legally protected. If it be decided that the rights, privileges and powers possessed by plaintiff should receive judicial sanction, that conclusion would be expressed by declaring that plaintiff possesses "property."

Plaintiff's contract with NIOC constitutes "property" within the purview of Section 4. *North Texas Producers Ass'n* v. *Young,* 308 F.2d 235, 243 (5th Cir. 1962).[28]

Plaintiff has argued that he could have sold the oil at $1.19 a barrel f.o.b. Abadan to an oil company which, in turn, could have transported the oil to this or any other country or that he could have sold the NIOC contract outright. This eliminates the necessity of plaintiff's evidencing a substantial financial status or demonstrating his

background and ability to engage in the oil business—requirements that do exist in order to establish "business" as distinguished from "property."[29] The contract itself is asserted to have been inherently valuable. It is entitled to the protection afforded by § 4 of the Clayton Act.

Defendants have argued that the contract had no intrinsic value for the asserted reasons that "the prices (11888) were unattractive, and any such company contemplating buying the alleged contract would have known that it was buying a law suit by AIOC over the title to the oil. . . ." Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and for Summary Judgment, p. 28.

This argument is without force because (1) it raises issues of fact on this summary judgment motion; and (2) its thrust is not on the question whether plaintiff had "property" but on the question of the amount of damage, if any, sustained by plaintiff. *Cf. Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co., supra,* at 260.

Having concluded that plaintiff had "property" within the purview of Section 4, we next consider whether the alleged injury to that property was direct and primary.

For the reasons hereinafter set forth, we conclude that the alleged injury was direct and primary.

The alleged conspiracy aimed to prevent the purchase and sale of Iranian oil. There would be no meaningful distinction between an injury inflicted upon a prospective purchaser of plaintiff's Iranian oil contract and, on the other hand, an injury inflicted upon plaintiff himself as the potential seller of that contract. Both victims would be direct targets of the conspiracy.

(11889)

The salient feature just adverted to creates the distinction between the present case and those discussed above, in which the injury was found to be indirect, incidental and secondary—a distinction which, at best, is one of degree and which cannot be drawn by any "hard and fast rule." *Productive Inventions, Inc.* v. *Trico Prods. Corp., supra,* at 680.

In the typical situations involving the lessor of a moving-picture theatre, the patent-licensor, or the stockholder of a corporation—the direct target of the conspiracy is the lessee-moving picture exhibitor, the patent-licensee, or the corporation. Consequently, those decisions hold that no direct and primary injury was suffered by the lessor, the licensor or the stockholder.

In view of the foregoing, we find that plaintiff has been injured in his property by the alleged conspiracy and that he has standing to sue.

DOES PLAINTIFF'S ALLEGED ILLEGAL AND SIMILAR MISCONDUCT PRECLUDE HIS STANDING TO SUE?

Defendants attack plaintiff's standing to sue, arguing that the uncontroverted evidence establishes that plaintiff procured his NIOC contract by means of conduct grossly violative of and repugnant to public policy.

(11890)

While there are variations in defendants' verbalization of this argument, the theme is the same: the NIOC contract, the predicate of plaintiff's Section 4 "property," is the fruit of plaintiff's illegal, immoral and corrupt acts

and, therefore, the Court should deny judicial recognition to plaintiff's status derived from that tainted contract.

One line of attack is that plaintiff procured the NIOC contract through the commission of federal criminal offenses. He is specifically charged by defendants with having violated five criminal statutes: the Logan Act (18 U.S.C. § 953), the mail fraud statute (18 U.S.C. § 1341), the false statement to government agency statute (18 U.S.C. § 1001), the conspiracy statute (18 U.S.C. § 371) and the false passport application statute (18 U.S.C. § 1542).

However, the record discloses the existence of genuine issues of material fact requiring resolution before it could be fairly determined that plaintiff had committed crimes in the process of securing the NIOC contract.

The Logan Act makes it a crime for any citizen of the United States directly or indirectly to commence or carry on correspondence or intercourse with any foreign government or any officer or agent thereof "with intent . . . to defeat the measures of the United States."

(11891)

Such evidence as there may be in this record of a violation of the Logan Act places in issue plaintiff's specific intent. That subjective circumstance would alone be sufficient to defeat this summary judgment motion, were the motion grounded only on a transgression of that statute.

Moreover, in considering proof of the "measures" of the United States required to spell out a violation of the Logan Act, the Court finds that there is substantiality to plaintiff's factual argument that the expressed United States policy with respect to the importation of Iranian

oil was neither definitive nor clear at the time of plaintiff's alleged violation.

The State Department's letter of February 4, 1952 (SONJ Ex. 3 for id.) to Senator Johnson (who forwarded it to plaintiff) would, at first reading, indicate that the State Department felt that Waldron should not in any way become involved in Iranian oil. A closer reading discloses that the letter expresses the State Department's "opinion," "attitude" and "belief," without incisively declaring or promulgating a defined policy.

While the State Department's choice of words may, according to diplomatic convention, be regarded as an expression of policy, it is doubtful whether this opinion-letter and its (11892) pronouncement rise to the status of "measures" for the penal purpose of the Logan Act.

That the State Department's attitude was not clearly and unequivocally delineated is suggested by its own subsequent language in a press release, dated December 6, 1952, expressing a less stringent view—a view that the movement of "small quantities of oil or oil products" seemed to the State Department as of relatively "minor importance" and "that the decision whether or not such purchases of oil from Iran should be made must be left to such individuals or firms as may be considering them, and to be determined upon their own judgment." State Dept. Bull., Dec. 15, 1952, p. 946.

The record thus poses an issue of material fact as to the existence and identity of "the measures of the United States" during the material period of time in 1952.

Another infirmity in defendants' claim that plaintiff violated the Logan Act is the existence of a doubtful question with regard to the constitutionality of that statute

under the Sixth Amendment. That doubt is engendered by the statute's use of the vague and indefinite terms, "defeat" and "measures." See *Shackney* v. *United States*, — F.2d —, — (2d Cir. 1964); Note, *The Void-For-Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67 (1960); E. Freund, *The Use of Indefinite Terms in Statutes*, 30 Yale L.J. 437 (1921). (11893) Neither of these words is an abstraction of common certainty or possesses a definite statutory or judicial definition.[29]

Since, however, there are other grounds for disposing of this motion, it is not necessary to decide the constitutional question.[30] Furthermore, any "ambiguity should be resolved in favor of lenity." *Bell* v. *United States*, 349 U.S. 81, 83 (1955), quoted in *Shackney* v. *United States*, *supra* at

Defendants' contention that plaintiff was part of a conspiracy (18 U.S.C. § 371) to violate the Logan Act is subject to the same infirmities as the defendants' claim based on a substantive violation of the Logan Act.

Plaintiff's violation of the mail fraud statute, according to defendants, stems from the multitude of false communications sent to Raphael, his Iranian agent, and intended to be transmitted to NIOC. The necessary elements of the offense of mail fraud are a scheme to defraud and the mailing of a letter for the purpose of executing the scheme. *Pereira* v. *United States*, 347 U.S. 1, 8 (1954).

Issues of material fact exist with respect to the materiality of plaintiff's statements, plaintiff's intent to deceive and plaintiff's knowledge of the falsity of the statements. *Cf. United States* v. *Buckner*, 108 F. 2d 921, 926 (2d Cir.), *cert. denied*, 309 U.S. 669 (1940).[31]

(11894)

Section 1542 of Title 18 of the United States Code proscribes the making of false statements in a passport application with the intent of inducing the issuance of a passport. The record does not contain evidence of any false statement in the passport applications of either Waldron or Nelson.[32]

Section 1001 of Title 18 of the United States Code makes it a crime, *inter alia,* to conceal a material fact from a department or agency of the Federal Government. The existence of genuine issues concerning materiality and plaintiff's intent precludes summary judgment based upon plaintiff's alleged violation of this statute. *Cf. Gonzales* v. *United States,* 286 F.2d 118 (10th Cir. 1960), *cert. denied,* 365 U.S. 878 (1961).

As an alternative to their charge that plaintiff committed criminal offenses, defendants contend that—regardless of the question of the technical criminality of plaintiff's conduct—plaintiff's conduct was so iniquitous, tainted, and repugnant to public policy and morals that this Court should deny recognition to plaintiff's claim and to plaintiff's status as a litigant.[33] Defendants' position is broadly couched in terms of public policy.

The cases concerned with illegal conduct debarring a litigant from court evince a circumspect approach.

(11895)

Violation of public policy may not be loosely invoked as a reason for depriving a litigant of his day in court. Any judicial judgment in this area of the law must be formulated in accordance with established criteria.

That standards are relative and involve judgment as to

matters of degree was pointed out by Judge Desmond in *McConnell* v. *Commonwealth Pictures Corp.*, 7 N.Y. 2d 465 (1960). We are confronted here not only with a sliding scale of ethical and moral value judgments but also with factual issues. The issues that must be resolved in appraising the moral aspects of plaintiff's conduct are intrinsically the same as those involved in determining whether plaintiff committed crimes.

Of course, it is not necessary to prove that a defendant committed a crime in order that his conduct be deemed sufficiently repugnant to morals to preclude his standing to sue. Nevertheless, a proper judicial evaluation of his conduct would embrace a consideration of his state of mind, his intention and his motives. These desiderata demonstrate the inappropriateness of a summary judgment, at least on the present record.

Whatever improprieties may be attributed to plaintiff, one thing is clear: the criticized acts were committed before plaintiff and the Iranians entered into their contract.[34] The Iranians, as the other contracting parties, have never attempted to rescind or avoid the contract.

(11896)

Defendants argue that—regardless of the characterization of the contract as void or voidable and regardless of the rights of the plaintiff and the Iranians *inter se*—plaintiff's course of conduct by which he procured the contract was so corrupt and repugnant that it tainted the contract and thereby disqualified it as "business or property" for the purpose of Section 4 of the Clayton Act.

Over and beyond the established distinction between void and voidable contracts and the fact that defendants

are not privy to the contract, other considerations militate against the granting of summary judgment.

Plaintiff has made sufficient asseverations of his honesty and denials of his wrongdoing to pose genuine issues of material fact. In such circumstances, plaintiff should not be summarily "adjudicated not only out of . . . [his] cause of action but out of . . . [his] good name as well." *Loew's Inc.* v. *Bays*, 209 F.2d 610, 612 (5th Cir. 1954).

The specific public policy of affording a litigant his day in court for the trial of genuine issues of material fact outweighs the generalized public policy of condemning immorality asserted by defendants to outlaw summarily plaintiff as a litigant.

(11897)

Defendants are also unable to escape the operation of still another specific public policy—the public policy that recognizes civil treble damage actions brought by private litigants as a device to aid the enforcement of the antitrust laws. See 110 Cong. Rec. 3018-19 (daily ed. Feb. 19, 1964).

The "public interest in vigilant enforcement of the antitrust laws through the instrumentality of the private treble-damage action" has long been recognized by the Supreme Court. *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 329 (1955).

In *Bruce's Juices, Inc.* v. *American Can Co.*, 330 U.S. 743, 751 (1947), the Court explained the rationale of that view:

> "This stimulates one set of private interest to combat transgressions by another without resort to governmental enforcement agencies. Such remedies have the advantage of putting back of such statutes a strong and reliable motive for enforcement, which relieves the Government of cost of enforcement. . . .

> It is clear Congress intended to use private self-interest as a means of enforcement and to arm injured persons with private means. . . ."

See also *D. R. Wilder Mfg. Co.* v. *Corn Prods. Refining Co.*, 236 U.S. 165, 174 (1915).

In the recent case of *J. I. Case Co.* v. *Borak*, — U.S. —, — (1964), the Supreme Court stressed the utility of such civil actions "as a most effective weapon in (11898) the enforcement" of federal regulatory statutes, saying that "it is the duty of the courts to be alert" to sustain such actions in order "to make effective the congressional purpose."

So strong is this public policy recognizing such actions as an enforcement technique that the courts have virtually abolished the defense of unclean hands or *in pari delicto* in private antitrust actions. See *Kiefer-Stewart Co.* v. *Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211 (1951); *Trebuhs Realty Co.* v. *News Syndicate Co.*, 107 F. Supp. 595 (S.D.N.Y. 1952).[35]

Defendants concede the nonexistence of the defense of unclean hands in such actions. To dull the edge of this concession, defendants contend that they are asserting the defense of "illegality," not the defense of "unclean hands." This reformulation does not affect the substance of the matter.

The reasoning that induces a court to deny relief to a litigant with unclean hands is fundamentally the same as the rationale behind the public policy denying relief to one who has engaged in illegal conduct.

In both instances, the consequence of the litigant's misconduct is the forfeiture of judicial recogition of his claim.

Regardless of the rubric of "unclean hands" or "illegal-

ity," the countervailing specific public policy (11899) favoring private antitrust actions outweighs the general public policy sometimes invoked to withhold relief from a litigant guilty of misconduct.

This is not to suggest that it is impossible to conceive of situations where a plaintiff may have engaged in conduct so repugnant to good conscience, morals and law that a court could find a basis for withholding relief under the antitrust statute. See *Singer* v. *A. Hollander & Son, Inc.*, 202 F.2d 55 (3d Cir. 1953); *Maltz* v. *Sax*, 134 F.2d 2 (7th Cir.), *cert. denied*, 319 U.S. 772 (1943). Such is not the case at bar.

Another legal hurdle that defendants are unable to surmount is the principle that illegality, to serve as the basis for a plea in bar, must be related directly to the subject matter of the action. See, *e.g.*, *Connolly* v. *Union Sewer Pipe Co.*, 184 U.S. 540 (1902); *Board of Trade* v. *L. A. Kinsey*, 130 Fed. 507 (7th Cir. 1904), *aff'd*, 198 U.S. 236 (1905); *Fuller* v. *Berger*, 120 Fed. 274 (7th Cir. 1903), *cert. denied*, 193 U.S. 668 (1904); *General Elec. Co.* v. *Minneapolis Elec. Lamp Co.*, 10 F.2d 851 (D. Minn. 1924).

Under Section 4 of the Clayton Act, an essential ingredient of plaintiff's prima facie case is proof of injury to plaintiff's "business or property" and resulting damages. (11900) Plaintiff's NIOC contract and plaintiff's prospective interest in a possible Cities Service-Iranian management contract and any damages flowing from defendants' interference with those contractual rights would be directly related to plaintiff's present claim.

However, plaintiff's actual and prospective contracts must be sharply distinguished from the congeries of facts evidencing plaintiff's allegedly improper and illegal acts in negotiating those contracts. Plaintiff's NIOC contract was lawful and enforceable. At most, plaintiff's misrepresentations and other alleged misconduct gave the Iranians

the power and privilege to rescind or avoid the NIOC contract.

In the absence of avoidance or rescission by the Iranians, the NIOC contract was valid. Defendants, strangers to the contract, cannot exercise the personal power and privilege of the Iranians and disavow the contract. They cannot achieve that result either in the name of the Iranians or in the name of American public policy.

While plaintiff's NIOC contract has a direct nexus with the subject matter of this litigation, the facts of plaintiff's alleged misconduct in negotiating that contract are collateral to the present action. Assuming, therefore, that plaintiff engaged in illegal and other improper acts in (11901) negotiating the NIOC contract, such collateral illegality could not serve as a defense in this case.

In view of the foregoing, defendants' motion for summary judgment and to dismiss is hereby denied.

Part II.

Background Proceedings

Plaintiff commenced this treble damage antitrust action against British Petroleum Co., Ltd., Cities Service Co., Gulf Oil Corp., Socony Mobil Oil Co., Inc., Standard Oil of California, Standard Oil Co. (New Jersey) and Texaco, Inc. in June, 1956. In May, 1959, plaintiff's claim as to Gulf Oil Corp. was dismissed with prejudice, on stipulation.

In its broadest terms, plaintiff's amended complaint alleges that the aforesaid defendants conspired to maintain control over the production and marketing of Middle Eastern petroleum and products, to exclude other United

States companies from conducting business in Middle Eastern petroleum and products and to suppress and eliminate competition in Middle Eastern petroleum and products.[36]

Immediately after the original complaint was served, defendants moved for and were granted permission to examine (11902) plaintiff and his associates. These examinations continued for four years, at the end of which time defendant-Cities Service moved for summary judgment.[37]

Plaintiff opposed the motion for summary judgment and cross-moved for discovery pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

On May 4, 1961 this Court ordered that Cities Service's motion for summary judgment be adjourned pending completion of an examination of Cities Service by plaintiff, pursuant to Rule 56(f).

Gist of the Respective Contentions

Now before the Court is a renewal of Cities Service's motion for summary judgment. Plaintiff has again cross-moved for discovery pursuant to Rule 56(f).

Plaintiff maintains in support of its cross-motion: (1) that all of the relevant evidence needed by him to establish his allegations is in the exclusive possession of Cities Service; (2) that plaintiff cannot effectively oppose Cities Service's motion without such evidence; and, (3) that the prior discovery proceedings limited by the Court to plaintiff's taking of the deposition of George H. Hill, Jr. has proved to be "abortive" and unrewarding.

(11903)

Cities Service counters with a comprehensively prepared submission that it has demonstrated beyond any doubt the nonexistence of any genuine issue of material

fact as to it; that this lawsuit has been burdensome and costly; and that the time is now ripe for a definitive disposition of the motion for summary judgment.

The chronology of events in 1952 has been set forth in Part I. of this opinion. Plaintiff reasons that the sequence of those events conjoined with the nature of Cities Service's course of conduct as revealed by those events permits the rational inference (which plaintiff asks the Court to draw) that Cities Service was bought off by the larger oil companies.

Plaintiff admittedly speculates that the alleged payoff may have consisted of a contract between Cities Service and Gulf Oil Co. for oil from Kuwait, signed shortly after the above-noted events, or an opportunity advanced to Cities Service by the other defendants to participate in the oil consortium formed several years after the above-noted events.

As phrased by plaintiff's attorney upon the oral argument, the issue is whether this defendant did "pull out of Iran and join forces with the other defendants to boycott the plaintiff and other people trying to deal in Iranian oil." (S.M. p. 14, Argument of May 27, 1963).

(11904)

Seemingly modifying its earlier accusation that there was a payoff to this defendant, plaintiff restates his position: "The essential question remains did they conspire. They could conspire for absolutely no consideration." (*Ibid.*)

Plaintiff contends that, in order to substantiate its claim that Cities Service was bought off and to flush out evidence as to what constituted the payoff, he must have further discovery.

APPLICATION OF F.R.C.P. RULE 56 (f)

Rule 56(f) motions should be liberally granted, see, *e.g.*, *Loew's Inc.* v. *Bays, supra; Tobelman* v. *Missouri-Kansas Pipe Line Co.*, 130 F.2d 1016 (3d Cir. 1942); *Dombrovskis* v. *Esperdy*, 185 F. Supp. 478 (S.D.N.Y. 1960), *aff'd on other grounds*, 321 F.2d 463 (2d Cir. 1963); *Goldboss* v. *Reimann*, 44 F. Supp. 756 (S.D.N.Y. 1942), especially where, as here, all of the allegedly material facts are within the exclusive knowledge of the opposing party. See *Slagle* v. *United States*, 228 F.2d 673 (5th Cir. 1956).

As Professor Kaplan has recently observed:

> "Under rule 56(f) the adversary need not even present the proof creating the minimal doubt on the issue of fact which entitles him to a full trial; it is enough if he shows the circumstances which hamstring him in presenting that proof by affidavit in opposition to the motion."

Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961-1963 (II)*, 77 Harv. L. Rev. 801, 826 (1964).

(11905)

The practical necessity for a liberal application of F.R.C.P., Rule 56(f) is underscored by the incisive reminder in *Dressler* v. *The MV Sandpiper*, 331 F.2d 130, 132 (2d Cir. 1964) of "the desirability of the summary judgment procedure" and of the pointed significance of the recent amendments to F.R.C.P., Rule 56(e). Rejecting a narrow view of the trial court's role in motions for summary relief as incompatible with the basic purpose of F.R.C.P., Rule 56, the Court of Appeals (per Kaufman, J.) in *Dressler* declared that "highly general assertions . . .

buttressed by no specific facts or evidentiary data, are hardly the sort of concrete particulars which the amendments sought to require." *Id.* at 133. See also *Scolnick* v. *Lefkowitz*, 329 F.2d 716 (2d Cir. 1964).

Since plaintiff must—if he is to oppose successfully Cities Service's summary judgment—eventually submit "specific facts" which "would be admissible in evidence" [Rule 56(e)], plaintiff should be given another opportunity to conduct pretrial discovery.

Plaintiff will be allowed to examine Burl S. Watson, A. P. Frame and J. E. Heston, all of Cities Service Co., in accordance with the order to be settled on June 30, 1964.

Such discovery proceedings will be supervised by the Court in order to maintain a just and workable balance between the respective interests of the opposing parties.

(11906)

The motion of Cities Service for summary judgment will be adjourned pending the completion of such discovery proceedings.

Part III.

Settlement of Order and Scheduling of Pretrial Discovery

The Court will confer with counsel on June 30, 1964, 10:30 A.M., for the following purposes:

(1) To define the scope of plaintiff's depositions of Cities Service Company, by the three representatives

named in the opinion, and to establish a schedule of dates for the taking of said depositions.

(2) To establish a schedule of dates for the service of plaintiff's opposition and defendants' replies, and for oral argument, on the pending motion to strike and for a pre-trial order made by defendants other than Cities Service.

WILLIAM B. HERLANDS
William B. Herlands
U.S.D.J.

Dated: New York, N. Y.,
June 23, 1964.

(11907)

FOOTNOTES

* Part I of this opinion deals with the motion for summary judgment and to dismiss made by defendants other than Cities Service Company. Part II deals with the summary judgment motion made separately by Cities Service and plaintiff's cross-motion for further discovery. The factual recitals in Part I are equally applicable, so far as relevant, to Part II.

1 Defendants' motion for dismissal of the action is based on depositions, exhibits and other documents dehors the pleadings. Consequently, it will be treated as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Rule 12 (c), Federal Rules of Civil Procedure; Butcher v. United Elec. Coal Co., 174 F.2d 1003 (7th Cir. 1949).

2 The seriousness of the dispute in the eyes of the United States is described in a letter sent to Congressman Emanuel Celler by Secretary of State John Foster Dulles in 1955:

> "As you know, the dispute between the Anglo-Iranian Oil Co. and the Iranian Government over the company's oil concessions and the subsequent nationalization of the oil properties by the Iranian Government resulted in the virtual cessation of the operations. As a consequence, Iran was deprived of its largest single source of income, and its whole economy was on the verge of disintegration. In addition to direct economic effects, there were other indirect but equally menacing political results. Threatened with bankruptcy, the Iranian Government was vulnerable to the political machinations of a Communist conspiracy to seize power. During the years 1951-53, the power of this conspiracy grew rapidly until, by 1953, Communist elements were merely biding their time while readying themselves for final seizure." Hearings before Antitrust Subcommittee on the Judiciary, House of Representatives, 84th Cong., 1st Sess., Pt. II, pp. 1556-59.

3 "Cmd. 8425" refers to a pamphlet entitled, "*Correspondence between His Majesty's Government in the United Kingdom and the Persian Government, and Related Documents concerning the*

(11908)

Oil Industry in Persia, February 1951 to September 1951," presented by the Secretary of State for Foreign Affairs to Parliament

by Command of His Majesty, December 1951, and published by His Majesty's Stationary Office.

[4] For example, W. Averell Harriman was sent to Iran to help bring about a settlement. State Dept. Bull., July 23, 1951, p. 130.

When this attempt failed, active support was given the efforts of the World Bank to solve the dispute. See State Dept. Bull., Jan. 21, 1952, p. 84.

Again when this attempt failed President Truman and Prime Minister Churchill, in August of 1952, made joint proposals to the Iranians regarding solution of the problem. State Dept. Bull., Sept. 8, 1952, p. 360.

[5] "Tr." refers to depositions which have been conducted by defendants.

[6] Both Waldron and Nelson have testified that they never had any experience in the field of marketing or selling oil. Tr. 13 (Waldron), 7490-91 (Nelson).

[7] At about this time, Nelson and Waldron contacted James A. Bentley, a management consultant, in the hope that he could locate oil tankers and purchasers. Shortly after receiving the State Department reply, Waldron wrote to Bentley and stated, "It is my personal opinion that it appears that the State Department would not actually interfere with any transactions on Iran oil which might be consumated [sic]." SONJ Ex. B-116 for id.

[8] This cablegram was confirmed by letter on February 21, 1952. SONJ Ex. 47 for id.

[9] Waldron and Nelson were aware of these negotiations. In his February 21st letter (see n. 8, *supra*) Nelson stated: "It was my hope that this cable would enable you to present something concrete to your Prime Minister to aid him in his negotiations with the International Bank Committee."

[10] The fact is that, with the exception of three rather half-hearted attempts on the part of Nelson, no efforts were made by any member of the Waldron group to obtain purchasers at this time. SONJ Exs. 5, 46 for id.; Tr. 7655-59.

(11909)

[11] Finally, on March 17, 1952 the World Bank recessed its efforts.

In fairness to plaintiff, it is pointed out that Mutual Security Agency Bulletin No. 59, published on March 25, 1952, listed Iran as a geographically acceptable source of crude oil. SONJ Ex. W/N-303 for id.

[12] The individual members of the Waldron group apparently felt no qualms about lying to each other as well as to Raphael. On April 16, 1952 Bentley wrote to Nelson:

> "Dick, I wish that I could tell you the names of the prospective oil purchasers. I simply cannot do this because I am bound not to disclose these names to anyone under any circumstances at this time. I doubt that I shall be able to obtain permission to disclose these names even in the strictest of confidence, until as and when they are ready to sign actual purchase contracts." SONJ Ex. 77 for id.

In his deposition, Bentley admitted that these statements were false as he had no such purchasers. Tr. 8395-96.

[13] An examination of this May 25th agreement shows it to be an option. By its terms, the Waldron group was not even entitled to receive a signed copy until an initial cargo of 10,000 tons had been paid for. SONJ Ex. 12 for id.

[14] No attempt was ever made by Zoes to actually charter or purchase a tanker. Tr. 9125.

[15] The contact was with Ray Carter, an individual who had been employed by Cities Service for some 25 years before leaving to engage as an oil broker. Tr. 1227.

[16] The following is a translation of the letter, as set forth in plaintiff's Memorandum of Facts (filed Aug. 20, 1963) pp. 20-21:

"Seal of Iran
Prime Minister

Without engagement July 26, 1952

(11910)

Dear Mr. Jones,

The Government of Iran having taken title to all the oil enterprises of the country desires that these enterprises be put in action as soon as possible.

It appears that this plan will be well realized if the services of some American companies of first rank can be obtained, provided the latter will lend their technical assistance (in marketing, operating, direction of personnel).

As our National Iranian Oil Company has already had some commercial transactions with your company, and we are informed that your organization is well placed from this point of view to render such a service, for this reason among others, therefore we have the

pleasure of inviting you to come to Teheran as soon as possible, to the end that we may discuss the details of such an enterprise.

Thanking you in advance, please be assured of our very serious consideration.

Dr. M. Mossadegh

Mr. W. Alton Jones,
President
Cities Service Company
Sixty Wall Tower
New York 5, N.Y."

[17] Plaintiff claims that Jones' sudden loss of interest was caused by Cities Service's having been "bought off" by the other defendants and thus becoming a member of the alleged conspiracy.

[18] The events which followed the diplomatic break are set forth in a letter sent to Congressman Celler from Secretary of State Dulles on July 13, 1955. See n. 2, *supra*.

> "On October 22, 1952, the situation was made still more difficult by Mosadeq's action in severing diplomatic relations with the British Government, which made it impossible for the participants to engage in direct negotiations. Meanwhile, the

> Iranian Parliament grew increasingly hostile to Mosadeq's drive toward dictatorship. In order to rid himself of this opposition, Mosadeq dissolved the Parliament. To give some color of legality to this action he arranged for the conduct of a so-called referendum which was manipulated by force and chicanery so as to ratify the dissolution of Parliament.
>
> "Finally, in August 1953, Mosadeq took the final steps which confirmed his intention to rule as a dictator without regard for constitutional limits. On August 15 he was dismissed by an imperial decree which appointed General Zahedi as the new Prime Minister. Mosadeq refused to relinquish his office, caused the bearers of the decree to be arrested and, contrary to the constitution, used force to maintain himself in power, in which he was supported by the illegal Tudeh Party. Having dissloved the Parliament, reduced the courts to impotence and made a fraud of the electoral process, he now proposed to rule by personal fiat.
>
> "There followed a period of 4 days of serious disorders during which steps were taken by Mosadeq's cohorts, in collaboration with the Communists, to overthrow the monarchy. However, the revolting elements proceeded in such blunt fashion with the campaign to discredit and disgrace the monarchy

that they produced a counterreaction in the form of a popular uprising against this effort to destroy the throne. The aroused people, assisted by loyal elements of the army, rose to defend the legitimate Government of Prime Minister Zahedi, and the Mosadeq regime was forced out. It should be noted that, although the Mosadeq government in effect defeated itself by its unreasonable and dictatorial acts, Iran had been forced dangerously close to domination by the Communist and there is good reason to believe that had this popular revolt not taken place Iran would actually have fallen under Communist control within a matter of days." See n. 2, *supra*.

[19] The fact is that plaintiff was so busy in connection with the incipient Cities Service deal that he had no time to search for customers.

[20] The Richfield negotiations suddenly terminated in September, 1953. Tr. 4272-73. Plaintiff charges that Cities Service (who had a minority interest in Richfield) frustrated plaintiff's negotiations with Richfield.

(11912)

[21] Consequently, those decisions denying summary judgment in complicated antitrust cases where genuine issues of fact respecting defendants' conduct existed are inapposite.

[22] See n. 1, *supra*.

[23] Nelson's net worth in 1952 was approximately $24,000. SONJ Ex. B-267 for id.

Waldron's net worth was about $86,000. Tr. 1918-19. Tr. 1918-19; SONJ Ex. B-269 for id.

Zoes' net worth was stated to be about $140,000. SONJ Ex. B-268 for id.

[24] "The Court: The question is, was he [plaintiff] in a position to take advantage of this letter of credit? You say he was.

Mr. Lane: Yes.

The Court: How?

Mr. Lane: What I am saying is, where under the Consortium they buy this oil at $1.20 a barrel plus a dime that goes to the Anglo-Iranian Oil Company, and that is a valuable contract to them, if he had a contract to buy three million tons—

The Court: But these people are in the oil business.

Mr. Lane: Wait a second. If he had a contract to buy it at $1.19, he had something which would interest other people in buying that oil.

The Court: In other words, you claim that the value of the contract was not in having him act as an importer—

Mr. Lane: That is right.

The Court: —but in his ability to assign or sell the contract?

Mr. Lane: That is right."

Argument of Motion, May 11, 1964, pp. 219-20. See also Tr. 6745-46.

25 Plaintiff has asserted that he and his associates expended over $50,000 trying to implement the contract. Defendants contend that $14,000 is a more accurate estimate.

26 The reason behind this limitation was articulated in *Snow Crest Beverages, Inc.* v. *Recipe Foods, Inc.*, 147 F. Supp. 907, 909 (D. Mass. 1956). In that case, Judge Wyzanski stated that without this limitation

(11913)

> ". . . there would as a result of the treble damage provisions of the anti-trust acts have been given in each case to the plaintiff what has sometimes been called a 'windfall' . . . In effect, businessmen would be subjected to liabilities of indefinable scope for conduct already subject to drastic private remedies."

27 Counsel have not called the Court's attention to any Congressional reports or debates that would shed light on the legislative purpose underlying this choice of language. Nor has the Court's independent research disclosed such interpretive aids.

28 In *North Texas*, the court held, "A valid contract is property." Defendants point out that in *North Texas*, the court was not faced with this specific issue as plaintiff had showed more than a contract. The court specifically found that plaintiff had the financial resources to implement the contract, as at a later date he did in fact enter the business. Moreover, the plaintiff in *North Texas* was found to have had prior experience in the business.

The court chose to emphasize the "property" aspect of plaintiff's case, and in fact used this analysis to distinguish *Duff* v. *Kansas City Star Co.*, 299 F.2d 320 (8th Cir. 1962). In *Duff*, the court accepted as true plaintiff's allegations that: (1) he had been in the newspaper business eight years before he attempted to re-enter it; (2) he owned a copyrighted newspaper name; (3) he had located an office; (4) he had made arrangements to have his paper printed; (5) he had taken extensive samplings of the advertising market and newspaper industry; and, (6) he had the capital necessary to enter the business. Despite these facts, however, plaintiff's antitrust complaint was dismissed on the ground that he had not shown "busi-

ness or property." The court in *Duff* specifically found that there was no property right in the trade-name for the purpose of section 4.

[29] This is not to suggest that plaintiff can prevail upon his motion without first demonstrating that he intended to use or was using this property in a manner which was inconsistent with the purposes of the conspiracy. See *Pastor* v. *American Tel. & Tel. Co.*, 76 F. Supp. 781 (S.D.N.Y. 1940); *Rossman* v. *Pullman Co.*, 15 F. Supp. 325 (S.D.N.Y. 1936). Plaintiff must show that he was "injured" in his "property."

(11914)

The record sufficiently indicates, at least for purposes of this motion, that plaintiff made serious efforts on numerous occasions to sell the oil and/or the contract. See Affid. Submitted by Plaintiff Pursuant to Order Dated May 22, 1964.

[30] The Logan Act originated out of a resolution offered on December 26, 1798 by Congressman Roger Griswold of Connecticut. After it was reported out as a bill, it was approved by President Adams on January 30, 1799. The debates on this legislation before the 5th Congress, 3rd Session (1798-1799) were thereafter compiled by Gales and Seaton in 1851 as Annals of Congress of the United States. Page references herein are to the 1851 compilation.

The primary purpose of the resolution was "to punish a crime which goes to the destruction of the Executive power of the Government" (p. 2488); "to guard by law against the interference of individuals in the negotiation of our Executive with the Governments of foreign countries" (p. 2494; see also pp. 2588, 2604); to proscribe the exercise by an individual of the power "to frustrate all the designs of the Executive" (p. 2494).

The statute as a whole was criticized in debate by Albert Gallatin (of Pennsylvania) and Edward Livingston (of New York) on the ground that "it is drawn in the loosest possible manner; and wants that precision and correctness which ought always to characterize a penal law" (p. 2637; see also p. 2595); and that there is no "clear idea of the precise acts upon which it is designed to operate" (p. 2690).

The record of debates discloses no discussion of the intended meaning of the words "defeat" or "measures."

The Court finds no merit in plaintiff's argument that the Logan Act has been abrogated by desuetude. From the absence of reported cases, one may deduce that the statute has not been called into play because no factual situation requiring its invocation has been presented to the courts. *Cf.* Shakespeare, *Measure For Measure*, Act II, Scene ii ("The law hath not been dead, though it hath slept.").

It may, however, be appropriate for the Court (Canons of Judicial Ethics, Judicial Canon 23) to invite Congressional attention

(11915).

to the possible need for amendment of Title 18 U.S.C. § 953 to eliminate this problem by using more precise words than "defeat" and "measures" and, at the same time, using language paralleling that now in § 954.

[31] While there is considerable evidence presently before the Court that plaintiff knowingly made false representations with intent to deceive, the Court cannot rule that, as a matter of law, plaintiff is guilty of the crime of mail fraud. See Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464 (1962).

[32] See text, p. 8, *supra*. Oil is literally a "raw material." Therefore, the statements of Waldron and Nelson are, strictly speaking, accurate.

[33] Defendants argue that plaintiff's conduct should be condemned in light of the public policies mirrored in the aforementioned penal statutes.

Defendants also charge that plaintiff's 50 percent contingent fee contract with Raphael larded with Raphael's none-too-subtle written intimations of a payoff to then politically influential Iranians illegitimatizes the entire transaction.

For an analysis of the rationale underlying the distinction between criminal acts and immoral acts, see Newett, *Morality And The Criminal Law*, 14 U. of Toronto L.J. 213 (1962). *Cf.* Shaw v. Director of Public Prosecutions, 2 All E. R. 446, 452 (House of Lords 1961), where it was said:

> " . . . there remains in the courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the state. . . . That is the broad head (call it public policy if you wish). . . . It matters little what label is given to the offending act."

[34] This fact alone is sufficient to distinguish the great majority of cases relied upon by defendants. Most of the cases cited by defendants involved suit on a contract made between plaintiff and

(11916)

defendant, the performance of which acts contrary to public policy. See, *e.g.*, Trist v. Child, 88 U.S. 441 (1874); Tool Co. v. Norris, 69 U.S. 45 (1864); Marshal v. Baltimore & Ohio R. R., 57 U.S. 314 (1853).

In the case at bar, defendants are not being sued on a contract. They are not parties to plaintiff's contract. The performance of plaintiff's contract did not involve acts that would have been indisputably contrary to public policy.

[35] The only type of antitrust situation in which the defense of *in pari delicto* has been held to be available is one where plaintiffs were claimed to have been parties to the alleged illegal acts of defendants. See Pennsylvania Water & Power Co. v. Consolidated Gas Elec. Light & Power Co., 209 F. 2d 131 (4th Cir. 1953), *cert. denied*, 347 U.S. 960 (1954); Lehmann Trading Corp. v. J & H Stolow, Inc., 184 F. Supp. 21 (S.D.N.Y. 1960).

[36] Plaintiff's Amended Complaint, July 12, 1963, par. 9. Defendant Cities Service was not named as one of the original conspirators but was alleged to have joined the conspiracy at a date not known to plaintiff. *Id.* at par. 11.

[37] Plaintiff charges Cities Service with having been bought off by the other oil companies.

Order, Dated May 3, 1961

(12142)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant Cities Service Company having moved, by Notice of Motion, dated April 8, 1960, for an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in its favor dismissing plaintiff's complaint as against it, it is hereby

ORDERED that the said motion be, and the same hereby is, adjourned, pending completion of an examination of defendant Cities Service Company by plaintiff pursuant to

Rule 56(f) of the Federal Rules of Civil Procedure; and it is hereby further

ORDERED that said examination shall commence on the 31st day following the conclusion of the deposition program set forth in the Order of this Court dated February 11, 1958; and it is hereby further

ORDERED that said examination be limited and confined to the following two subjects:

(12143)

(a) the making of the Agreement dated January 26, 1953, between Cities Service Company and Gulf Oil Corporation, for the sale and processing of Kuwait oil; and

(b) the acquisition by Cities Service Company of the opportunity to become a member of the Iranian Oil Consortium;

and it is hereby further

ORDERED that said examination of Cities Service Company shall be by George H. Hill, Jr.; and it is hereby further

ORDERED that plaintiff's examination of defendant Cities Service Company shall be conducted on no more than ten (10) working days; and it is hereby further

ORDERED that, within twenty (20) days following the conclusion of said examination, plaintiff and defendant Cities Service Company may submit to the Court any por-

Order, Dated May 3, 1961

tion of such deposition for final consideration of the pending motion.

s/ WILLIAM B. HERLANDS
United States District Judge

Dated: New York, N. Y.
May 3d, 1961

U.S.D.C.
Filed
May 4, 1961
S.D. N.Y.

Memorandum Opinion, Dated March 30, 1961

(11656)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

MEMORANDUM

The motion of defendant Cities Service Co. for summary judgment is adjourned pending completion of such pretrial proceedings as may hereafter be appropriately conducted by plaintiff.

When the commencement of such proceeding shall be deemed to have become timely under the outstanding and controlling order of the court, counsel will be heard as to

the nature and scope of proposed depositions, discovery and inspection, and other related pre-trial matters. At such hearing, due consideration will be given to the formulation (11657) of orders defining the issues, specifying subjects, and particularizing the questions encompassed within plaintiff's pre-trial proceedings.

For the guidance of counsel, the court observes, on the basis of the present record:

1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.

2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events.

3. But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. This court has examined virtually every reported summary judgment decision rendered in this circuit since *Arnstein* v. *Porter*, 154 F. 2d 464 (2d Cir. 1946), over one thousand in number. The rationale and philosophy of *Arnstein* v. *Porter* have not been attenuated by the subsequent course of decisions.

(11658)

4. In view of (a) the surface complexity of the case, (b) the indirect law enforcement aspects of even this private antitrust case, (c) the very extensive pre-trial

examinations of the plaintiff already conducted by the defendants and the complete absence of any pre-trial examination of any defendant by the plaintiff—it would appear to be fair to postpone a decision of the summary judgment motion and to afford the plaintiff an opportunity to engage in appropriately supervised discovery and related pre-trial proceedings.

5. Because plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record, so insubstantial, the plaintiff will not be given carte blanche authority to conduct untrammeled pre-trial proceedings. Such proceedings will be closely regulated. The usual Federal rule permitting fishing expeditions will be curtailed. A just and workable balance will be maintained between the respective interests of the opposing parties.

The court will confer with counsel with respect to the settlement of an order in accordance with the foregoing views.

March 30, 1961.

WILLIAM B. HERLANDS
U.S.D.J.

U.S. DISTRICT COURT
FILED
MAR 30 1961
12:05 pm
S. D. OF N. Y.

Amended Complaint

(11848)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff, by his attorneys Casey, Lane & Mittendorf, brings this action against defendants and upon information and belief alleges as follows:

I.

JURISDICTION AND VENUE

1. This claim is made under the provisions of Section 4 of the Clayton Act, 15 U.S.C. § 15, for damages to compensate the plaintiff for injuries suffered by him in his business and property by reason of the commission by defendants of acts forbidden by Sections 1 and 2 of the Sherman Act, as amended, and Section 73 of the Wilson Tariff Act, 15 U.S.C. §§ 1, 2, 8. The jurisdiction of this Court is invoked under the Clayton Act and the Act of June 25, 1948, 28 U.S.C. § 1337.

(11849)

2. Each of the defendants transacts business within the Southern District of New York and may be found there.

3. Plaintiff, Gerald B. Waldron, is a resident of the State of Arizona and does business as Consolidated Brokerage in Denver, Colorado.

II.

Description of Defendants

4. The following corporations are made defendants herein;

Name and Address	Place of Incorporation	Principal Place of Business	Abbreviated Name
British Petroleum Company Ltd. (Formerly Anglo-Iranian Oil Company, Ltd.) 610 Fifth Avenue New York, New York	Registered in United Kingdom	London, England	"Anglo-Iranian"
Cities Service Company 60 Wall Street New York, New York	Delaware	New York, New York	"Cities Service"
Socony Mobil Oil Company Inc. 150 East 42 Street New York, New York	New York	New York, New York	"Socony"
Standard Oil Company of California 30 Rockefeller Plaza New York, New York	Delaware	San Francisco, California	"Socal"
Standard Oil Company (New Jersey) 30 Rockefeller Plaza New York, New York	New Jersey	New York, New York	"Jersey"
Texaco, Inc. 135 East 42nd Street New York, New York	Delaware	New York, New York	"Texas"

(11850)

5. Each of the defendants is a fully integrated enterprise carrying on, by its own acts or through numerous subsidiaries and affiliates in many part of the world, exploration, production, transportation, refining, marketing, research and manufacturing operations with respect to petroleum and products thereof. Defendants, and their subsidiaries and affiliated companies, together with their co-conspirators Gulf Oil Corporation (hereinafter called "Gulf") and the Royal Dutch/Shell Group (hereinafter called "Royal Dutch") control a substantial part of the Free World's estimated crude oil reserves, and dominate the production, refining and transportation of petroleum and products in the Free World, and account for the major part of the petroleum and products marketed in the countries of the Free World.

6. The acts herein alleged to have been done by the defendants were authorized, ordered, and done by officers, agents or employees thereof.

III.

The Commerce Involved

7. The trade and commerce involved herein is in petroleum and products thereof. The words "petroleum and products" shall be deemed to include crude oil and the principal products refined therefrom, including gasoline, fuel oils, lubricating oils, gas oils, diesel oils, white oils, and kerosene. Defendants, and their subsidiaries and

affiliated companies, have for many years imported and are now importing vast quantities of Middle Eastern petroleum and products into the United States and putting the same into interstate commerce. The value of such imported petroleum (11851) and products amounts to many millions of dollars each year.

IV.

The Conspiracy

8. As is set forth in great detail in *United States* v. *Standard Oil Company (New Jersey) et al.*, Civil Action No. 86-27, the so-called "Oil Cartel Case" now pending in this Court, defendants Anglo-Iranian, Socony, Socal, Jersey and Texas, assisted by Gulf and Royal Dutch as co-conspirators, at least as early as 1951, and at all times hereinafter mentioned engaged in an unlawful combination and conspiracy to restrain interstate and foreign commerce of the United States in petroleum and products and particularly Middle Eastern petroleum and products in violation of Section 1 of the Sherman Act and Section 73 of the Wilson Tariff Act, and unlawfully to monopolize the same in violation of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act.

9. The aforesaid conspiracy and monopolization consisted of a continuing secret agreement and concert of action among defendants Anglo-Iranian, Socony, Socal, Jersey and Texas and their co-conspirators among other things to:

(a) Secure, maintain and exercise control of the produc-

tion, refining, transporting and marketing of Middle Eastern petroleum and products;

(b) Exclude United States companies and persons, other than defendants and their co-conspirators, from engaging in the production and refining of (11852) Middle Eastern petroleum and products, and from importing Middle Eastern petroleum and products into the United States;

(c) Suppress and eliminate competition in Middle Eastern petroleum and products.

10. On May 1, 1951, the Government of Iran nationalized all Iranian oil properties and related installations, and, shortly thereafter, turned over the management of the nationalized industry to the National Iranian Oil Company, an instrumentality of the Government of Iran. Anglo-Iranian, the ousted concessionaire, protested this, challenged its legality, and sought in diverse ways to frustrate nationalization and regain its former position in Iran. These efforts centered on blocking the sale of Iranian petroleum and products so as to weaken the Iranian economy and promote political unrest and civil disorder.

11. In these circumstances, Socony, Socal, Jersey, and Texas, as well as Gulf and Royal Dutch, came to the assistance of Anglo-Iranian and for the purpose of preserving to themselves and Anglo-Iranian the control of Middle Eastern petroleum and products which they had theretofore enjoyed, determined and agreed that no one of them nor any other person should henceforth deal in Iranian petroleum and products until a solution of the controversy between Anglo-Iranian and the Iranian Gov-

ernment was found which would effect that purpose. Subsequently, at a date not known to plaintiff because defendants concealed the facts from plaintiff, defendant Cities Service joined this conspiracy.

12. On May 26, 1952, plaintiff obtained from the (11853) National Iranian Oil Company a contract for the sale of 15,000,000 metric tons of Iranian petroleum and products, at prices substantially below existing Gulf of Persia prices, to wit: $4.14 per ton below the then posted price of $12.89 per ton for the first 3 million tons and $2 per ton below the posted price for the remaining 12 million tons. The contract was for five years and granted plaintiff exclusive selling rights to the United States market.

13. Defendants and their co-conspirators acting in secrecy through various agents and innocent people did the following to achieve a boycott of Iranian petroleum and products, one of the purposes and effects of which was to frustrate plaintiff's dealings in Iranian petroleum and products:

(a) Anglo-Iranian published a series of advertisements threatening litigation to any who would deal in Iranian petroleum and products. To assist Anglo-Iranian in its effort to frighten off prospective purchasers, defendants and their co-conspirators caused statements to be circulated and published within and without the oil industry attacking the Iranian nationalization, maligning the Iranian leaders, characterizing Iranian petroleum and products as stolen or "hot" oil, disparaging and threatening any who would deal in (11854) Iranian petroleum and products and generally supporting Anglo-Iranian

in its campaign to regain its former position in Iranian petroleum and products.

(b) On or about August 1, 1952, Anglo-Iranian, through its New York attorneys, Sullivan & Cromwell, sent to plaintiff and others, letters threatening litigation against plaintiff and any others who dealt directly or indirectly in Iranian petroleum and products, asserting that any such dealing would be contrary to international law. These threats were a part of a campaign by Anglo-Iranian to frighten off would be purchasers by threatening costly litigation.

(c) Defendants and their co-conspirators acting in concert, refused to purchase Iranian petroleum and products from plaintiff and others, including the National Iranian Oil Company, notwithstanding that petroleum and products were critically short in many areas of the Free World supplied by defendants (11855) and their co-conspirators and that such purchases were necessary to sustain Iran's economic and political independence as a member of the Free World. At the same time, in order to strengthen Anglo-Iranian's hand in dealing with Iran, defendants and their co-conspirators greatly altered their production and marketing in order to supply from other sources the petroleum and products needed to fill the gap created by the Iranian stoppage.

(d) Defendants and their co-conspirators, or some of them, caused knowledge to be disseminated among independent refiners, marketers and dealers that they would look with disfavor upon any who dealt in Iranian petroleum and products, and that those who did deal in Iranian petroleum and products would suffer economic reprisals.

(e) Defendants and their co-conspirators, or some of them, cause knowledge to be disseminated among tanker operators that any tanker operator partici-

pating in the transportation of Iranian petroleum and products might be blacklisted from transporting petroleum and products owned or controlled by defendants.

(11856)

(f) Defendants and their co-conspirators, or some of them, caused the Chase National Bank and the Marine Midland Trust Company to refuse plaintiff customary financial service in connection with the importation of Iranian petroleum and products.

(g) Defendants Anglo-Iranian, Socony, Socal, Jersey, Texas and their co-conspirators Gulf and Royal Dutch, with the aid of others, secretly threatened, induced and conspired with defendant Cities Service to break off all dealings with plaintiff and not to proceed further with its demonstrated interest in dealing in Iranian petroleum and products, including the management of certain aspects of the Iranian petroleum industry.

(h) Defendants and their co-conspirators, or some of them, interfered with plaintiff's attempt to market through Oil Merchants Company substantial quantities of Iranian aviation gasoline and other products for use by the United States Military and other United States governmental agencies.

(11857)

14. Finally, Anglo-Iranian, Socony, Socal, Jersey, Texas, Gulf, Royal Dutch and others in furtherance of the aforesaid conspiracy and monopoly entered into a cartel arrangement called the Iranian Consortium, the purpose and effect of which was to formalize their control of substantially all Iranian petroleum and products, thereby bringing to final and complete frustration plaintiff's effort to market Iranian petroleum and produc-

V.

Effects

15. The alleged conspiracy has had among others the following effects:

(a) Defendants and others associated with them have acquired, to the exclusion of plaintiff, among others, control of vast quantities of Middle Eastern petroleum and products, significant quantities of which are imported into the United States and distributed in interstate commerce, at costs substantially below the cost of petroleum and products produced domestically.

(b) Plaintiff has been completely and utterly frustrated in his attempt to sell the fifteen million metric tons of Iranian petroleum and products (11858) which he had under contract from the National Iranian Oil Company as aforesaid.

(c) Plaintiff's advantageous business relationship with the National Iranian Oil Company has been completely and utterly destroyed.

VI.

Prayer

Wherefore, plaintiff prays:

1. That the aforesaid conspiracy and monopoly be declared unlawful and in violation of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act;

2. That judgment be entered against defendants and each of them for $109,260,000, being the amount equal to three times the damages sustained by plaintiff, with interest thereon;

3. That judgment be entered against defendants and each of them for the amount of reasonable attorneys' fees and the costs and disbursements of this action; and

4. That plaintiff be granted such other relief as to the Court seems just and proper.

Dated: New York, New York
June 28, 1963.

CASEY, LANE & MITTENDORF
Attorneys for Plaintiff
By /s/ SAMUEL M. LANE
Samuel M. Lane, a Partner
Office & P. O. Address
26 Broadway
New York 4, New York

Plaintiff demands trial by jury.

Notice of Motion, Dated April 8, 1960

(11189)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Sirs:

PLEASE TAKE NOTICE that the within motion will be brought on for hearing before Judge William B. Herlands at the United States Court House, Foley Square, New York, N. Y., in the Courtroom assigned to Judge Herlands, on April 25, 1960, at 10:30 A.M., or at such other time and place as he may fix for the said hearing.

Dated: New York, New York
April 8, 1960.

Yours, etc.

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON
Attorneys for Defendant
Cities Service Co.
Office and P. O. Address
575 Madison Avenue
New York 22, N. Y.

To:

CASEY, LANE & MITTENDORF, Esqs.
Attorneys for Plaintiff
26 Broadway
New York 4, N. Y.

Motion for Summary Judgment, Dated April 8, 1960

(11190)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant Cities Service Co. moves this Court for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for a summary judgment in its favor dismissing plaintiff's complaint as against it, on the ground that there is no genuine issue as to any material fact and that Cities Service Co. is entitled to a judgment as a matter of law, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
April 8, 1960.

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[The following affidavit was filed by plaintiff pursuant to an order of the Court below on June 10, 1964 but was missing from the files of the District Court when this appeal was docketed.]

Affidavit Submitted by Plaintiff in Opposition to Motion for Summary Judgment Pursuant to Order Dated May 22, 1964

[SAME TITLE]

State of Colorado,
County of Denver—ss.:

GERALD B. WALDRON, being duly sworn, deposes and says that he is the plaintiff in the above-entitled action and submits this affidavit in compliance with the order of this Court dated May 22, 1964 which directs him to serve and file an affidavit setting forth specific facts and evidentiary data constituting the particulars upon which he relies to show that there are genuine issues for trial with respect to (1) the existence of "business or property" within the meaning of § 4 of the Clayton Act, and (2) the infliction of direct and primary injury on said "business or property."

Business or Property

1. The business in which deponent engaged and for the frustration of which deponent seeks treble damages under § 4 of the Clayton Act was the business of buying, selling, and otherwise dealing in Iranian crude oil and the principal products refined therefrom, and in exploiting advan-

tageous relationships and opportunities growing out of said business.

2. The property injured by defendants, for which deponent seeks treble damages under § 4 of the Clayton Act, was the business enterprise described above and, within that general description, the contract negotiated with the National Iranian Oil Company (N.I.O.C.) in the name of Consolidated Brokerage under date of May 25, 1952 (SONJ Ex. 12), the agreement with Cities Service Company to pay deponent and his associates 1¢ to 2¢ per barrel on all Iranian production (SONJ Ex. W-343) and the advantageous relationship which deponent and his associates enjoyed with each of said companies.

3. The specific facts and evidentiary data upon which deponent relies to show that he did in fact devote himself to and engage in the business described above and that he did in fact possess and enjoy the property described above within the meaning of § 4 of the Clayton Act may be summarily outlined as follows:

Pre-Contract Activities

4. Deponent's first interest in Iranian oil took the form of a proposed barter of Puerto Rican sugar for Iranian oil in December, 1951 (Tr. 16; 233). Iran, at that time, was short of sugar and of foreign exchange with which to buy sugar but had crude oil in abundance (Tr. 1141-42). It was James A. Raphael of Teheran who first suggested to Richard S. Nelson of Denver the possibility of the barter

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of Iranian crude oil for sugar (Tr. 24). Raphael, an Iraqi, was associated at that time with Valanejad, who was an Iranian, and Dufour, who was a Swiss, in the export-import business (Tr. 103; 111; 3903; 5886). Nelson, who was also engaged in that business (SONJ Ex. 1), had been for many years the Export Manager of Gates Rubber Company, one of the largest industrial enterprises in the Denver area (Tr. 6472-73). Nelson had travelled widely and had done business in Iran prior to this proposal (Tr. 6473; 6500). Nelson discussed the suggestion with deponent, who was in the food brokerage business in Denver (Tr. 9), and, together, Nelson and deponent opened negotiations with Juan Serralles of Puerto Rican American Sugar Refining, Inc. (Tr. 16-17), a large sugar refiner in Puerto Rico (Tr. 16-17). Serralles responded favorably, and agreement was reached in principle that the Iranians would deliver the oil, c.i.f. Puerto Rico, and take in return refined sugar, f.o.b. Puerto Rico (Tr. 5601; 577). Several meetings to work out the details of the contract were scheduled but postponed when the Iranians announced that they were unable to secure a tanker to transport the oil (Tr. 27-28; 232-33), and deponent and Nelson found that the only way they could secure a tanker for that purpose at that time was to buy one, which was beyond their means (Tr. 577; SONJ Ex. 71 and 72; SM Ex. W/N-1012).

5. When the barter of oil for sugar failed, deponent and Nelson turned to the possibility of buying Iranian crude oil and products, f.o.b. Persian Gulf, and, in that connection, canvassed a number of possible domestic buyers, including; Frontier Oil Company, Denver, Colorado (Tr. 39; 730; 747;

5198); Bay Oil Company, Denver, Colorado (Tr. 216; 581; 730; 746; 5734); Continental Oil Company, Denver, Colorado (Tr. 216; 747; 5735); Shamrock Oil Company, Amarillo, Texas (Tr. 30; 37; 41; 44; 5735); Hal L. Shockley & Company, Bellaire, Texas (Tr. 211; 223; 226; 5644; SONJ Exs. 32, 34); and W. A. Delaney, Jr., Ada Oklahoma (Tr. 37; 313; 749; 5742).

6. To the same end, and in fact commencing before the discussion of the proposed barter of oil for sugar terminated, deponent and Nelson by cable and letter opened negotiations with N.I.O.C. through Raphael, with a view to purchasing Iranian crude oil and products, f.o.b. Persian Gulf (letter Nelson to Enterprise, 12-21-51; cable Consolidated to Enterprise, 12-24-51; cable Enterprise to Consolidated, 12-24-51; letter Nelson to Enterprise, 1-8-52, annexed hereto). As early as January 29, 1952, in the course of these communications, Raphael reported that Prime Minister Mossadegh had quoted a price of $8 per metric ton, f.o.b. Abadan (SONJ Exs. 27(a), (b), 29).

7. By letter dated February 20, 1952, Raphael informed Nelson that Count Della Zonca had signed a contract with N.I.O.C. for 20,000,000 tons of Iranian crude oil to be delivered at the rate of 2,000,000 tons per year for ten years and submitted to Nelson the basis of a comparable long term contract at $8 per metric ton, f.o.b. Abadan (SONJ Ex. 9).

8. Recognizing the need for an experienced, independent oil man, not only to assist them with the drafting of

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an appropriate contract, but also with the exploitation of such a contract if it could be obtained, deponent and Nelson made inquiries and were introduced by deponent's friend, Roy Timmons, to James A. Bentley of New York City by telephone in February, 1952 (Tr. 30; 34). Bentley had formerly been financial vice president of the Carrier Corporation, which he left in 1946 to engage in a management consultant business in New York City (Tr. 8368). He was also chief executive officer and principal stockholder of Oil Recovery Corp., a company which holds basic patents for and operates in the field of secondary recovery of oil (Tr. 8369). He was also president and principal stockholder of Carbonic Products Inc. (B.P. Ex. B-1100, p. 3). One of the early investors in the latter company was Nelson Rockefeller (Tr. 8603; B.P. Ex. B-1100, p. 3). Bentley lived in New York City where he had an office in the Chrysler Building (Tr. 8368). So convinced were deponent and Nelson of Bentley's knowledge of and standing in the oil business that they gave him an interest of fifty percent in their venture (SONJ Ex. W-138).

9. With Bentley's assistance in New York and Raphael's assistance in Tehran, deponent and Nelson worked out the terms of a proposal for the purchase of 14,000,000 tons of Iranian crude oil and/or refined products at $8.00 per ton for the first 2,000,000 tons, f.o.b. Abadan, and at the posted price for the Gulf of Persia less $2.00 per ton for the ensuing 12,000,000 tons, the total to be lifted over a period of five years. (SONJ Exs. 40, 10, 50, 45, 51, 56, 57, 60, 66, 67 and 68). An increase in the price to $8.75

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per ton, first announced to Nelson by Raphael by letter dated April 16, 1952 (SONJ Ex. 13), eventuated, after further correspondence, in a proposal for 15,000,000 tons of Iranian crude oil and/or refined products at $8.75 per ton for the first 3,000,000 tons and at the posted Persian Gulf price less $2.00 per ton for an additional 12,000,000 tons, f.o.b. Abadan. (SONJ Exs. 11, 85, 88, 83). In making this announcement, Raphael enclosed a new draft of a proposed contract (SONJ Ex. 95).

10. With Bentley's assurances that if such a proposal were embodied in a contract, he, Bentley, had two major oil companies with tanker fleets and a third without a tanker fleet but with the ability to assemble one (Tr. 1655-58, 5211; SONJ Ex. 77) each of which was ready to take over any such contract, (SONJ Ex. 77) deponent and Nelson flew to Teheran on May 13, 1952 (Tr. 880). They had asked Bentley several times to identify the major oil companies from which he had commitments, but he had on every occasion informed them, with expressed regret, that he was strictly enjoined from revealing the names (Tr. 8395-96; SONJ Exs. 75, 77). Deponent and Nelson did not doubt that Bentley was telling the truth (Tr. 5684).

The Contract of May 25, 1952

11. Arriving at Teheran, deponent and Nelson met Raphael and almost immediately embarked upon a series of conferences with representatives of N.I.O.C. which eventuated, on May 25, 1952, in the signing of a contract

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with N.I.O.C. This contract (SONJ Ex. 12) accorded the right to Consolidated to buy 3,000,000 metric tons of crude oil and/or refined products from N.I.O.C. during the first 12 months and a like amount during each succeeding 12 month period for an additional 4 years, making a total of 15,000,000 metric tons, at a discount of $4.14 per ton for the first 3,000,000 and a discount of $2.00 per ton for the remaining 12,000,000. Purchases in excess of 3,000,000 tons per annum were to be at the $2.00 discount, and Consolidated was given the option to take at least half of the tonnage in refined products. Among the provisions of this contract which were particularly beneficial to Consolidated were one which granted Consolidated exclusivity for the United States market, one which permitted Consolidated to assign the contract in whole or in part, and one which looked to the appointment of Consolidated as N.I.O.C.'s agent for the whole or part of the United States. One aspect of the contract which was particularly favorable to Consolidated was that the contract did not require Consolidated to make any payment in advance. Another was that it did not require Consolidated to post a performance bond. The only consequence of Consolidated's failure to take deliveries on schedule was cancellation of the contract at N.I.O.C.'s option. The provision relating to exclusivity read as follows:

> *"Exclusivity.*
>
> Within the duration of this agreement, and provided the terms of this agreement are complied with, the First Party shall not offer for sale its crude

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> oil or refined products to other buyers for the United States market under any condition. In the event of a prospective buyer approaching the First Party for the purchase of Iranian oil products for the U.S.A. Market, then the First Party shall first advise the Second Party of such a deal, in writing, and the Second Party shall take all necessary steps, in so far as possible, to take care of the applicant's demand. If the Second Party within twenty days' time of receiving such an advice fails to take up the deal on the same terms and conditions proposed by the applicants, then, the First Party shall be free to sell to the applicant his requirements."

Finally, it was specifically provided in Clause 13 that "This agrement shall remain effective for the duration mentioned under clause two hereof despite any arrangements the Iranian Government or the First Party [N.I.O.C.] has undertaken or may undertake in the future with any other party or parties provided the terms of this agreement are satisfactorily carried out by the Second Party [Consolidated]."

Initial Post-Contract Activities

12. Returning to New York on June 3, 1952 (Tr. 1065), deponent and Nelson were introduced by Bentley to James E. Zoes (Tr. 791). Zoes was engaged at the time in selling steel pipe to oil, gas and chemical companies engaged in constructing pipe lines in the United States and other parts of the world (Tr. 9023). Bentley had assigned one-half of his interest in the venture to Zoes (Tr. 1908;

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9272). Deponent and Nelson were also introduced to Ray Carter at this time (1227-28). Carter had been associated for many years with Cities Service Oil Company, was well-known in the oil business, and, at the time, was engaged in the brokerage of crude oil and products. He lived in Greenwich, Connecticut and made his office at 70 Pine Street, New York City (SONJ Ex. W-258). Carter had been introduced to Bentley by Zoes (Tr. 1227-28).

13. Bentley informed deponent and Nelson that the three major oil companies from which he had had commitments now declined to take any Iranian oil, but that other efforts had been made to find purchasers (Tr. 2049). These efforts, as Bentley described them were divided into two classifications: first, there were the marketers which showed interest in delivered products; and second, larger companies who were interested in taking over the contract.

14. Among the marketers which Zoes had contacted were Sterns, Inc., Coastal Oil Company, Stendrup Oil Company and Connoil Corp.

Sterns, Inc.

15. Sterns, Inc., a New York company associated with Sterns Ltd. of Great Britain (Tr. 790; 792; 9432; 9435), indicated interest in June, 1952, in purchasing 15,000,000 barrels of No. 2 fuel oil and, possibly, some crued oil (Tr. 1724; 1739; 9431; 9439; SONJ Ex. B-1098). Sterns proposed to use this oil to supply electric power plants in the

New York area (Tr. 9432). In response to this interest, Zoes offered Sterns 15,000,000 barrels of No. 2 fuel oil, and quoted f.o.b. Abadan. He was then informed that Sterns had consulted its British parent company and could not accept any oil from Iran (Tr. 9435). It was explained that Sterns dealt in oil products all over the world; that it depended upon the major oil companies for its source of supply (Tr. 9435), and that it could not expect to do business with the majors if it dealt in Iranian oil (Tr. 9282-83; 9439).

Coastal Oil Company

16. Coastal Oil Company, a New Jersey distributor of fuel oil (Tr. 5609), was contacted by Zoes in June or July, 1952 (Tr. 1310; 1387; 5609-10; 9079). Mr. Gregory of that company indicated an interest in purchasing 1,000,000 barrels of kerosene, 1,000,000 barrels of No. 4, and 3,000,000 barrels of No. 2 fuel oil (Tr. 1310; 9424; SONJ Ex. B-135; SONJ Ex. B-141; SM Ex. B-1175). Gregory stated that his company would provide a letter of credit, and that it had access to the necessary tankers (Tr. 9341). He expressed the hope that his company could buy products from Consolidated at a discount of 6.5 mills per gallon under the Journal of Commerce listed prices (Tr. 1312; SONJ Ex. B-141) f.o.b. his company's tanks in New Jersey, but if this were not possible, he would be interested in purchasing f.o.b. Abadan, provided insurance could be secured which would reasonably protect his company (Tr. 1312). Nothing eventuated from these conversations, however, because, as Gregory put it to Zoes,

Coastal had such a close working relationship with its supplier, Standard Oil of New Jersey (Tr. 5609), that Iranian oil was too hot to handle (Tr. 5608). Gregory also feared litigation (Tr. 5609; 9430-31).

Stendrup Oil Company

17. Stendrup Oil Company, located in New York City, was contacted by Zoes in May, June and July, 1952 (Tr. 793; 9079). At one stage in the negotiations, it was suggested that the McCarthy Oil Company and Eastern States Petroleum Company join Stendrup in purchasing oil from Consolidated (Tr. 9403-05). Under this plan, the refining was to be done by Eastern States (Tr. 9405). Like other companies with which Zoes negotiated, Stendrup feared economic reprisals if it dealt in Iranian oil (Tr. 9282-83) and, consequently, it insisted upon such low prices (Tr. 9407-09) that no deal eventuated. As one Stendrup employee said, the proposal to deal in Iranian oil "takes more guts than I've got" (Tr. 9402; SONJ Ex. B-239).

Connoil Corp.

18. The Connoil Corp., a distributor of oil in New York City, was contacted between May and July, 1952 by Zoes (Tr. 792; 9079; 9410-20). Connoil said, as a start, they wanted to purchase 1,000,000 barrels of kerosene, 1,000,000 barrels of No. 2 oil, 1,000,000 barrels No. 5 oil and 1,000,000 barrels Bunker C fuel oil on a long term basis (Tr. 1727-28; 9413; SONJ Ex. B-238). The sale was to be

f.a.s. New York (Tr. 9414; SONJ Ex. B-238). But then interest waned when Connoil stated that though the prospect of buying Iranian oil was interesting, it did not think it worth alienating its suppliers, the major companies (Tr. 9416-17). Connoil officials expressed their fear of the major companies (Tr. 9418) and said they knew of the majors' opposition to any movement of Iranian oil (Tr. 9282-83).

Hunt Oil Company

19. Bentley and Zoes contacted Hunt Oil Company of Dallas, Texas through H. L. Williford, an executive of that Company (Tr. 1628; 1635-6; SONJ Ex. B-212). In Newsweek, May 21, 1951, it had been reported that H. L. Hunt, one of the biggest independent oil producers in the world, had gone to Iran, presumably to offer to manage the Iranian oil industry. This occurred at a time when it was also reported that various of the major American oil companies were interested in the same project (Newsweek, May 21, 1951, page 36, annexed). Williford said that Hunt was still keenly interested in taking over all Iranian production and refining and would be willing to take over Consolidated's contract and pay the Waldron group a royalty (Tr. 8415). Subsequently, however, Williford reported that Hunt was not interested (Tr. 161; 8423; SONJ Ex. B-212).

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Efforts to Sell the Majors

20. In June, 1952, Williford contacted several of the major oil companies, including certain of the defendants, on behalf of Consolidated (Tr. 782; 1623-29; SONJ Ex. B-211). These companies included Standard Oil Company of New Jersey (Tr. 782; 853); The Texas Company (Tr. 782; 853; 1617; 1626); Arabian-American Oil Company (Tr. 853-55; 1644; 1706); and Sinclair Refining Company (Tr. 1706; SONJ Ex. B-224). The price which Williford quoted was five cents a barrel on top of Consolidated's cost, f.o.b. Abadan, with one cent commission for himself (Tr. 1645-46; SONJ Ex. B-211). According to Williford, each of these companies refused to deal with Consolidated (Tr. 1645; 1651-52; SONJ Ex. B-211). Zoes also contacted Sinclair (Tr. 4127-28; 5419; 9473; SONJ Ex. B-795) without avail (Tr. 4128).

First National Oil Company

21. Serious discussions were opened with First National Oil Company of Long Island City, New York, in mid-June, 1952 (Tr. 751; 1262). In these discussions, First National was represented by Mr. Margolis, President of the company, and Messrs. Lyon and Ascher. Participating on behalf of Consolidated were deponent, Nelson, Bentley and Zoes (Tr. 751; 1326; 1337). First National Oil Company had participated in the movement of oil from Mexico following nationalization in that country (Tr. 752). At the first meeting, Margolis indicated that he

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wished to obtain No. 2 fuel oil (Tr. 754). At the second meeting, the discussion turned upon a proposal to assign Consolidated's contract to First National Oil Company (Tr. 1262). Bentley had prepared the draft of such an assignment (Tr. 1326; SONJ Ex. B-145). Bentley's proposal called for First National to put up a letter of credit for $200,000; to obtain tankers, the first of which was to arrive in Abadan by August 15, 1962; to pay the expenses and assume the risk of litgation with A.I.O.C.; and to store the oil in its shore tank facilities (Tr. 1322-23). Consolidated was to receive 20% of the profits realized by First National under the assigned contract (Tr. 1323; SONJ Ex. B-147). Margolis objected to forfeiture provisions suggested by Bentley (Tr. 1329-30; SONJ Ex. B-147), and discussed the need to renegotiate Consolidated's contract with respect to time provisions and prices for delivery to the West Coast (SONJ Ex. B-146), but this was to occur only after the initial stages of the contract had been performed (Tr. 1328-30; 8508). At the third conference in this series, Margolis said that he was negotiating with Asiatic Petroleum Company, which was closely affiliated with A.I.O.C. (Tr. 758; 1064; 1342), and was fearful that if he dealt in Iranian oil, his supplies would be cut off, as had happened before when he had purchased Mexican oil after nationalization (Tr. 759; 1064; 1342; 3860-61). He had therefore decided not to go any further with deponent and his associates but indicated that he might be interested in reopening negotiations after his deal with Asiatic was completed (Tr. 760; 1342).

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Other Prospective Purchasers

22. During the same period, that is to say, in June 1952, contacts were made with Riddell Petroleum Corporation of 30 Rockefeller Plaza, New York City; Ryan Oil Company of Denver, Colorado; Paragon Oil Company of New York City; Ashland Oil & Refining Company of Ashland, Kentucky and Kerr-McGee Oil Company of Oklahoma City.

23. Riddell told Zoes, after the details of the Consolidated contract had been given to him, that he would check with his supplier, a major oil company, and let Zoes know (Tr. 9469). Subsequently, Riddell telephoned to say that he would not touch this oil because the destiny of his company was linked with a major oil company (Tr. 9469-70; SONJ Ex. B-243).

24. Ryan Oil Company, which was planning to build a refinery on the Gulf Coast (Tr. 774; 1711-12), indicated an interest in acquiring 600,000 tons, or more, of Iranian crude (SONJ Ex. B-225), but was reluctant to become involved in litigation with A.I.O.C. (Tr. 1711-12) or with the companies which were backing A.I.O.C. (Tr. 1711-12) and, because no assurance could be given that such litigation would not result, Ryan never placed an order (Tr. 5737-38).

25. Paragon Oil, a marketer of fuel oil in the New York Area (Tr. 766; 3469; 3472; 5755) would have noth-

ing to do with Iranian oil (Tr. 5755) because of its fear of jeopardizing its association with and purchases from the Cartel companies (Tr. 3469; 3471; 5755).

26. When Zoes opened the subject with Ashland Oil & Refining Company through Rud Babor, vice president of Frontier Oil Refining Co., which was a division of Ashland (Tr. 1533; 9445-49), and quoted a price f.o.b. Abadan for crude oil, Babor said, "Are you kidding, trying to bring this oil here?" (Tr. 9447-48). When Zoes pressed him he replied "This is really a tough one and I doubt it very much. However, I will mention it to Ashland." (Tr. 9449). Nothing came of this.

27. In June, 1952, Mr. Kennedy, an officer of Kerr-McGee Oil Industries, Inc. called on deponent to discuss purchasing Iranian Oil (Tr. 767; 1845). Thereafter deponent was in contact with Kennedy from June, 1952, through June, 1953 (Tr. 2086; 4797). Kerr-McGee was interested in importing 20,000 barrels of crude a day (Tr. 3622; SONJ Ex. W/N-682), for a new refinery which it was planning to build (Tr. 3622). In March, 1953, Kennedy told deponent that Kerr-McGee was not interested in Iranian oil because of the reprisals they would suffer (Tr. 3861), by which he explained that Kerr-McGee feared that they would be put in an unfavorable position with respect to the price of oil at the well head and the use of pipe lines both of which were controlled by the "Majors" (Tr. 4807-4808). Then in June, 1953 he said that the situation was loosening up (Tr. 4798). He,

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therefore, once again consulted his superiors on the question of importing Iranian oil (Tr. 4803, 4813) and once again was told Iranian oil was too "hot" (Tr. 4813). Negotiations between Kerr-McGee and deponent ended on July 8, 1953, when Kennedy wrote to deponent, saying, "I am very disappointed to inform you that Kerr-McGee is not interested in the Iranian crude. The threat of reprisals is too great" (Tr. 4806; SONJ Ex. W/N-944).

Cities Service

28. It was Carter, who had been for many years employed by Cities Service, who conceived the idea of offering Consolidated's contract to Cities Service (Tr. 1775). Hill, who was W. Alton Jones' executive assistant and who is presently Cities Service's general counsel, testified that Cities Service was short 100,000 barrels of crude oil per day and could have used Iranian crude in lieu of the crude it was then buying from others (Tr. 10196). Consolidated's contract provided for 60,000 barrels per day for five years (SONJ Ex. 12).

29. Negotiations were opened with Cities Service on June 11, 1952 (Tr. 8841-2). Present on behalf of Cities Service were Messrs. Frame and Lowe, vice-presidents. Carter and Bentley represented Consolidated (Tr. 8842). Early in these discussions it appeared that Cities Service's real object was to take over the entire Iranian oil industry on a management basis for a fee to be paid in Iranian oil (Tr. 6165-6; 6182-3; SONJ Ex. B-254), and to that

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end, Cities Service desired the Prime Minister of Iran to address an invitation to W. Alton Jones, Chairman of the Board, to visit Iran (Tr. 2106-7). Bentley insisted that for such an invitation Cities Service should pay deponent $1,000,000.00 (Tr. 2027-28; SONJ Ex. B-295). When Bentley failed to make any progress in this direction, deponent and Nelson joined Carter in conducting the negotiations, in place of Bentley, and finally reached an agreement to the effect that Cities Service would pay deponent and his associates one cent to two cents per barrel on all Iranian production if they secured the invitation which Cities Service desired and if Cities Service suceeded in negotiating a management contract (Tr. 2186-7; 6165-70; SONJ Ex. W-343). Cities Service agreed, further, that anything it did in Iran, it would do through deponent (Tr. 1797-8; SONJ Ex. B-254) and that, if the management deal went through, Consolidated's contract would be merged into it (Tr. 1795; 6386-89).

30. On July 13, 1952, in pursuit of the invitation desired by Cities Service, deponent and Nelson flew for the second time to Teheran (Tr. 1483). With them they took not only a draft of the form of invitation which Cities Service desired (Tr. 2268), but also specially prepared brochures describing Cities Service in general and the Chairman of its Board in particular (Tr. 2106-7). After meeting with the Prime Minister, deponent and Nelson secured the desired invitation (copy annexed) and returned to New York where deponent delivered it to Shaw at the Cities Service office (Tr. 2327).

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31. On August 16, 1952, deponent, Nelson and, this time, Carter, flew once more to Teheran at the request of Cities Service to make arrangements for living accommodations for Jones and Cities Service personnel (7302-3). Jones (Chairman of the Board), Heston (Head of Crude Production), Frame (Head of Refining), Whetzel (Manager of Foreign Operations) and Robeson (Jones' Executive Secretary) followed soon after. (CS Ex. W-1034). It is reported that before Jones left for Iran, he consulted with President Truman and Secretary of Interior Chapman (Tr. 2220-1; 6221).

32. Jones and his team were most cordially received in Iran, were shown the refinery in Abadan and other parts of the nationalized facilities. Jones stated publicly and privately that the facilities appeared to be in good shape, that very little would be required to reactivate the industry, that technical personnel could be supplied from the United States on a temporary basis, and that permanent Iranian personnel could be trained in the United States eventually to take over the operation (Tr. 2222; 5467). The only serious problem, according to Jones, was transportation (Tr. 6237-38; Business Week September 27, 1952, page annexed).

33. Leaving Jones and his party, as well as Nelson and Carter, in Paris, deponent returned to the United States arriving on September 22 or 23, 1953 (Tr. 349) and immediately called on Leon Lemos to see what tankers might be available. Deponent and Nelson had conferred

earlier in the summer with Capt. George Lemos to discuss the possibility of securing tankers for Iranian oil (Tr. 133-4; 140; 157; 1068; 126). Captain Lemos had then indicated that if there were any political risks, blacklisting or boycott in prospect, it would be impossible for his company to entertain any proposal (SM Ex. B-1010). Leon Lemos, when told by deponent of the possibility of a Cities Service management contract, evinced identical concern over blacklisting (Tr. 5554), but stated that for a company of Cities Service's importance it would be possible to secure tankers in due course (Tr. 141; 147-8; 3033; 5296; 5554; 6289; CS Ex. B-1029).

34. With the foregoing information, deponent returned to Cities Service only to be told that Cities Service was no longer interested in Iranian oil. No explanation was vouchsafed (Tr. 143; 2752; 6325). Several months later, in January 1953, Cities Service entered into a long term contract for 20,000 barrels per day of Kuwait oil to be supplied by the Gulf Oil Corp., which was A.I.O.C.'s fifty/fifty partner in Kuwait (Plt's Ex. CS 8).

Sun Oil Co.

35. During the summer of 1952, Carter contacted J. N. Pew, Chairman of the Board of Sun Oil Co. of Philadelphia, one of the largest independent companies on the Eastern Seaboard (Tr. 3512). Pew was interested but hesitant, so Carter called again and offered ten million barrels of crude at $1.25 per barrel f.o.b. Abadan (Tr.

2460; 2464; SONJ Ex. B-376). Pew rejected the offer, saying he did not want to buy a lawsuit (Tr. 2460; 3494). Carter renewed the offer several times (Tr. 3513; 5259). Finally, on January 8, 1953 Pew wrote Carter "We are not in position to give this [offer] consideration at any price at the present moment" (SONJ Ex. C-669).

Efforts to Sell Aviation Gasoline to The United States Military

36. During the same time that deponent and his associates were seeking the invitation which Cities Service desired, they were in contact, through Carter, with Addison Brown. Brown was Chairman of the Oil Merchants Company, 1501 East 96th Street, Chicago, Illinois, a substantial midwest distributor of petroleum products (Tr. 9674). This company had also handled large quantities of petroleum products and, more particularly, aviation gasoline ("avgas") for the United States Military, and was a qualified Government bidder (Tr. 9682; 9745). Carter had known Brown for many years, Carter having brokered many cargoes for Brown (Tr. 9684; 9685). When Carter opened the subject, Brown indicated an interest in handling Iranian refined products, both for sale to the United States Military establishment and for commercial users in the United States (Tr. 9766-7).

37. Brown, in turn, contacted Lt. Col. E. J. Fourticq, head of the Fuel Section of the Material Contract Division of Supply and Services of the United States Air Force.

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Brown had had prior dealings with Colonel Fourticq, who was in charge of all purchases of avgas for the Air Force (Tr. 9688). Fourticq evinced great interest in Brown's proposal to supply Iranian avgas to the Air Force (Tr. 9693). He suggested that it could be picked up by United States Government tankers at Abadan and distributed in the Mediterranean area, thus obviating a 22 day haul from the United States (Tr. 9686; 9695; 9809). Based on extended conversations with Fourticq and others in the military establishment, Brown concluded that, as a starter, he could conservatively sell one or two tankers per week for six months to the Air Force (Tr. 9760-1). To this effect, Brown wrote to deponent on July 12, 1952, saying that his company was interested in making a purchase of 126,000,000 to 210,000,000 gallons of avgas, the first 126,000,000 to be lifted by United States tankers during the next six months and the balance during the ensuing four months (SM Ex. OM-1189). In addition to the avgas, Brown wanted 440,000 tons of regular gasoline, 109,000 tons of jet fuel, 113,000 tons of diesel fuel and 348,000 tons of No. 6 fuel for the Air Force. It was his opinion, based on his discussions with Fourticq and others in the military, that all of these products could be sold to the Air Force, f.o.b. Abadan, for lifting in Government tankers (Tr. 9800; SONJ Ex. B-388).

38. Brown indicated that if he were able to sell avgas and other refined products to the Armed Services, he wanted Consolidated to sell him, ton for ton, a like quan-

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tity of such products for Brown's commercial users in the United States (Tr. 9766-67).

39. On September 5, 1952, at Carter's suggestion, Brown offered the Air Force 10,000 tons of avgas (SM Exs. OM-1190-1). He received no formal reply to this offer (Tr. 9703). Accordingly, at Colonel Fourticq's suggestion Brown renewed his offer on December 15, 1952, addressing it directly to Colonel Douglas W. Brown, Executive Officer, Armed Services Petroleum Purchasing Agency, Washington (SM Exs. OM-1193, 1200). The offer was refused (SM Ex. OM-1199).

40. It was the belief of deponent, Carter and Brown that if just one Government tanker could have lifted oil from Abadan, A.I.O.C.'s blockade would have fallen. As Whetzel of Cities Service said, "I just wish to God you boys could get a tanker in there. I believe it would clarify the whole situation" (Tr. 6323). Between the first offer by Brown to the Air Force and the second to the Petroleum Purchasing Agency in Washington, deponent, Brown, and Carter, as well as various members and branches of the United States Government, sought to persuade A.I.O.C. to lift its blockade or, alternatively, to persuade the United States to break it with a Government tanker (Tr. 9803; 9809; SONJ Ex. Z-516; SONJ Ex. Z-503). According to Brown, ". . . various members of the Military felt keenly that this tremendous source at Abadan, which was under economic blockade or otherwise caused to be stopped should be made available to the United States Military in the crisis of shortage because they [United States Mili-

tary] were supplying, not only their requirements, but most of the rest of the world" (Tr. 9809).

Extension of Contract

41. Under Consolidated's contract, deponent was required to lift at least 400,000 tons before December 31, 1952, and to open with the Bank Melli, Iran, a letter of credit within 30 days of the signing of the agreement in the amount of $175,000.00 to cover the first 20,000 metric tons (SONJ Ex. 12). Failure to take delivery on schedule would result in cancellation of the contract (SONJ Ex. 12). Deponent and his associates had established a $200,000 letter of credit (SONJ Ex. W-284), but, for the reasons stated above, had not been able to lift any oil. Accordingly, as the year-end approached, so did the prospect of cancellation of the contract. With the assistance of the Iranian Ambassador to the United States, the Honorable Alleh Yar Saleh, deponent and Carter opened negotiations with N.I.O.C. for an extension of Consolidated's contract (SONJ Ex. W-258), and this was granted for 6 months by letter dated December 29, 1952 (SONJ Ex. W/N-557).

Efforts to Interest West Coast Purchasers

42. In view of the West Coast shortage of 100,000 to 200,000 barrels of crude oil per day (Tr. 389-90) it was thought that Consolidated could sell oil under its contract to West Coast purchasers.

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43. As early as June, 1952, Beloil Corporation Ltd. of Inglewood, California, indicated an interest in purchasing up to 3,000,000 tons of crude oil from Consolidated over a one year period (Tr. 1518-19). In November, 1952, deponent called at Beloil's office in California (Tr. 390; 768) and talked with Mr. Frazier of that company. Frazier said that he could handle 50,000 barrels a day (Tr. 2925) for sale in the United States Gulf Coast and in Asia (Tr. 5727), but he wanted it at 50% below the market price. Nothing came of these talks.

Sun, Ltd.

44. In December, 1952, and again in June, 1953, deponent conferred with Mr. Lindus of Sun, Ltd., located in Los Angeles (Tr. 391; 735; 3127; 3285-6; 3305). On three separate occasions deponent met Lindus in Los Angeles to discuss exploitation of Consolidated's contract (Tr. 734; 3327; 3387; 3711). In the course of these conversations, deponent supplied Lindus with the specifications of the oil which Lindus had requested (Tr. 3307; 3359; SONJ Exs. W/N-620-22) and explained the terms of Consolidated's contract. Lindus expressed his satisfaction (Tr. 3314-15; 3322; 5646) and said that he had two large West Coast companies which were interested in buying 20,000 to 40,000 barrels of Iranian crude oil per day under Consolidated's contract (Tr. 3180; 3309; 5663), provided that they got the "green light" from A.I.O.C. (Tr. 3180; 3325; SONJ Ex. W/N-578). Lindus was also interested in importing the oil himself (Tr. 3399). In this connection, he worked out a plan under which successive corporations would buy the

oil (Tr. 735; 3383; 3623; 5737), provide storage space (Tr. 3383), and secure tankers. (Tr. 3384; 3889). The price was to be $1.25 a barrel. (Tr. 400). Negotiations with Lindus were suspended in April, 1953, when N.I.O.C. announced that it would sell at a 50% reduction for six months (Tr. 3378-79). Lindus was unwilling to risk litigation with A.I.O.C. (Tr. 5496) and reprisals (Tr. 5645) for breaking the blockade if he were not going to receive a profit (Tr. 3378-79; SONJ Ex. W/N-753), and, of course, with Iranian oil selling at a 50% reduction, there would be no profit for him at $1.25 per barrel.

Northwest Oil Company

45. In March, 1953, deponent was contacted by Northwest Oil Company of Portland, Oregon (Tr. 186; 3477; SONJ Ex. W/N-656). Northwest indicated that it had storage capacity of 160,000 barrels (SONJ Ex. W/N-656) and was interested in a purchase contract which would keep one tanker fully occupied all of the time (SONJ Ex. W/N-658). It indicated, however, that it had been the victim of a freeze out by the major companies in 1952 and therefore would not want to buy Iranian oil until the threat of litigation with the British was over (Tr. 3481; 5633). Since this threat continued during the life of Consolidated's contract, no deal was ever made with Northwest (Tr. 5643).

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Time Oil Company

46. In June, 1953, deponent contacted Time Oil Company in Los Angeles and spoke to its president, Mr. Miller (Tr. 211; 396; 768; 3519; 3542). Time Oil operated a chain of filling stations, and Miller wanted to expand this business (Tr. 3545). In this connection, he proposed to rehabilitate a refinery north of Los Angeles capable of handling 4,000,000 to 14,000,000 barrels of crude oil a year (Tr. 393; 3548). For this he needed a long term supply of oil (Tr. 394; 3547). As he viewed it, Miller said that he would have to have a 25 to 50 year contract (Tr. 394; 3546) if he dealt with Iranian oil for, in that event, his other suppliers would cut him off (Tr. 210; 3546-7; 3856; 3860). Since the refinery would not be operable for seven to eight months, Miller proposed to commence by buying refined products under Consolidated's contract and, later, switching to crude oil (Tr. 393; 3549). He estimated his needs at 3,500,000 to 14,500,000 barrels per year. (Tr. 3596). Consolidated's contract was to be the starting point and was to be followed by a long term contract (Tr. 3561) which would have to be negotiated (Tr. 3551; SONJ Ex. W/N-674; Tr. 5723-24). Miller also informed deponent that, since any tanker which touched Iranian oil would be blacklisted (Tr. 3856), he would have to create his own tanker fleet (Tr. 3557).

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Richfield Oil Corporation

47. In June, 1953, deponent met with representatives of the Richfield Oil Corporation in Los Angeles, California (Tr. 186; 391; 3650-56). Richfield, a large, integrated company on the West Coast, was at that time and still is jointly controlled by Cities Service and Sinclair, each of which holds approximately one-third of the equity in the Company (Tr. 4128; SONJ Ex. B-795). At this confereence it was pointed out that there was a crude oil shortage of 100,000 to 200,000 barrels per day in California (Tr. 389; 399). Richfield's share of this shortage was 20,000 barrels per day (Tr. 399), and the Company was interested in purchasing such a quantity from Consolidated (Tr. 392; 3650-56). It was accordingly proposed that a contract be entered into for the delivery of crude oil to Richfield on the West Coast at 5% to 10% below the prevailing California price for one year with an option to renew at 5% (Tr. 339; 3650-1).

48. After examining the specifications of the Iranian crude oil which deponent submitted (Tr. 399; 3651), Richfield requested deponent to ship five gallons of the oil to Los Angeles by air (Tr. 399; 3651). Deponent had five gallons immediately flown to Denver from Iran and transshipped by truck to Los Angeles for analysis in Richfield's own laboratory (SONJ Exs. W/N-692, 835).

49. During the meeting in Los Angeles at the Richfield office in June, deponent explained the problems created

by the threats and fears of reprisals which he had encountered (Tr. 3650; SONJ Exs. W/N-690), but the Richfield representatives said that they were prepared to negotiate a contract with Consolidated if the specifications for the Iranian crude oil were acceptable (Tr. 3651; 4259). It was agreed, further, that Richfield would post a letter of credit (Tr. 4270) and help provide tankers (Tr. 3650).

50. In April, 1953, N.I.O.C. announced a 50% discount for 6 months (Tr. 3689; SONJ Ex. W/N-690). Still Richfield continued to negotiate with deponent under Consolidated's contract because the amount of oil which could be taken out of Iran during the 6 month 50% discount period was negligible in terms of Richfield's needs (Tr. 3689).

51. Notwithstanding the bright prospects raised by these dealings with Richfield, deponent was informed by telephone, in the Fall of 1953, that Richfield, after analysing its position, had decided that it had no need for Iranian Oil (Tr. 4272-74). Richfield took this position, admitting that the specifications on the Iranian oil were acceptable (Tr. 4272) and that the West Coast shortage still persisted (Tr. 4273). No further explanation was given (Tr. 4270-74). Subsequently, Richfield turned up with three "independent shares" in the Consortium: one for which it qualified on its own, and one each from Cities Service and Sinclair by assignment (Pltf's Exs. C.S. 77, 88).

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Holly Sugar Company

52. Iran depends upon beets for its sugar production (Tr. 3128); but the crop is inadequate and the refining facilities are outmoded (Tr. 1142; 3128). Accordingly, with the assistance and encouragement of the Iranian Ambassador (Tr. 4859; 4872), deponent contacted the Holly Sugar Company in Colorado Springs, Colorado, in January, 1953 (Tr. 770; 3127). Holly Sugar is one of the largest beet sugar producers in the Mid West (Tr. 3128; 3213).

53. After deponent had outlined the Iranian needs and had described Consolidated's contract, Merrill Shoup, president of Holly Sugar, indicated that his company would be interested in providing technical services and sugarmaking equipment to Iran in return for oil under Consolidated's contract (Tr. 3128; 3222-3; SONJ Ex. W/N-588). Specifically, the plan called for Holly Sugar to train Iranians in efficient sugar growing, harvesting, and refining methods; and to install sugar refineries in Iran (Tr. 3128; 3222-3; SONJ Ex. W/N-588). In return, Holly Sugar was to receive Iranian oil under Consolidated's contract (Tr. 3128). This oil was to be transported to an oil refinery in California owned by Holly Sugar (Tr. 3224) which was to be enlarged for the accommodation of the Iranian oil (Tr. 3225). Because tanker rates had dropped sharply to approximately $1.30 per barrel for delivery on the West Coast (Tr. 3238), the landed cost of the oil would have been $2.60 per barrel, as against the prevail-

ing market price on the West Coast at that time of $3.17 (Tr. 3238). It will be remembered that deponent's cost was $1.19 per barrel (Tr. 3238; SONJ Ex. 12).

54. Under the Holly Sugar plan, deponent was to use his good offices in Iran to facilitate the negotiation of a favorable contract. Deponent arranged a luncheon in Washington for Mr. Shoup with the Iranian Ambassador on February 17, 1953 (Tr. 3246-7; SONJ Ex. W/N-588). Deponent also secured approval of the plan from the State Department (Tr. 3249), and set about to obtain an official invitation for Mr. Shoup from the Iranian Government (Tr. 3225; 4874; 4881; SONJ Exs. W/N-967-970). Deponent's compensation was to be a share of the profits from oil sales made by Holly Sugar (Tr. 5834).

55. Notwithstanding the seriousness with which negotiations had been pursued with Holly Sugar, they came to nothing (Tr. 3217). Despite the drop in tanker rates (Tr. 3238), it was difficult, if not impossible, for Holly Sugar to obtain tankers to carry Iranian oil (Tr. 4857). Furthermore, as early as April, 1953, Holly Sugar took the position that it could not conclude any Iranian transaction until the legal problems growing out of the dispute over the nationalization of Iran's oil were resolved (Tr. 3508; SONJ Ex. W/N-666). Subsequent negotiations with Holly Sugar were attempted, but the case became hopeless when the Consortium took over (Tr. 3274-5).

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General Observations

56. To the prosecution of the business described in the foregoing paragraphs and in carrying on the negotiations which have been outlined above, deponent devoted the major part of his time from December, 1951, until June, 1953, and a very substantial part of his time between June, 1953, and the commencement of the lawsuit in June, 1956 (SONJ Exs. 78, 78A). From December, 1951, to June, 1953, the business upon which this lawsuit is founded was deponent's primary business interest and concern, and his food brokerage business was largely neglected and left to subordinates (Tr. 4134, 4168). The expenditure in money (Tr. 4130-32), viewed in relation to deponent's financial resources (Tr. 5036), was heavy; and the expenditure in time, work and worry (Tr. 5015) was enormous, by anybody's standards. To do what deponent did in the furtherance of the business in question required, in addition to the three trips to Iran, many trips to the East Coast and the West Coast of the United States, and a great deal of writing, cabling, telegraphing and telephoning. Even the personal physical risks were considerable (Tr. 7223-24).

57. Deponent's former associate, Nelson, devoted the major part of his time to the Iranian venture from December, 1951, to November, 1952 (Tr. 4134; 6664-74; 8195). Carter devoted the major part of his time to it from July, 1952, to January, 1953 (Tr. 1228; SONJ Ex. W-258). Bentley and Zoes devoted substantial parts of their time to it from February and May, respectively, until the fall

of 1952 (Tr. 8379; 8808; 9485). Each of these former associates also wrote many letters, made many telephone calls and attended many conferences. In addition, Carter accompanied deponent and Nelson to Iran on their third trip (Tr. 6226).

58. Self-serving as the statement may be, there was no time during deponent's active prosecution of the Iranian venture when he failed to pursue any avenue which seemed to him to present any prospect of exploiting Consolidated's contract with N.I.O.C., or the agreement which he and his associates had with Cities Service or the advantageous relationship which they enjoyed with those two companies. For the purposes of this motion he relies upon the facts set forth above and the documentary evidence referred to, and he does not suggest that the Court should look further, but he points out that defendant's motion is based on the whole record and that there are many other activities upon his part or upon the part of his former associates which are described in that record but not touched upon here.

Interference with Business or Property

59. In the absence of an opportunity to conduct discovery proceedings, deponent cannot be as specific as he would like to be in setting forth specific facts and evidentiary data show that defendants prevented him from exploiting the Consolidated Brokerage contract and the advantageous business opportunities which he enjoyed in Iran and the United States but he offers the following:

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60. Upon information and belief, defendants and certain French and Dutch interests at all the times in question constituted a cartel which controlled substantially all of the oil production, oil refining and oil pipelines in the Middle East and, either directly or, because of their economic power indirectly, substantially all of the oil tanker tonnage. (See complaint in *United States* v. *Standard Oil Co. (New Jersey), et. al.*, Civil Action No. 86-27, S.D.N.Y., and the consent decrees entered therein by Jersey, Gulf and Texaco, 1960 Trade Cas. ¶ 69,849 (S.D. N.Y. 1960); 1960 Trade Cas. ¶ 69,851 (S.D.N.Y. 1960); 1963 Trade Cas. ¶ 70,819 (S.D.N.Y. 1963); and Federal Trade Commission Staff Report of 1952, *The International Petroleum Cartel,* issued by the Select Committee on Small Business of the Senate, Committee Print No. 6, 82d Cong., 2d Sess. (1952) at pp. 22-29, annexed).

61. Upon information and belief, defendants and said other interests controlled most of the oil production in Venezuela, which was the other principal source of crude oil outside of the United States at that time (Ibid).

62. Upon information and belief, defendants and said other interests controlled most of the Free World's operations in producing, refining and transporting oil and refined products, and fixed the price thereof (Ibid).

63. Upon information and belief, it was in the interest of defendants and said other interests to maintain and perpetuate their dominant position in oil production, oil refining, oil transportation and oil marketing, and, to

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that end, to frustrate Iran's bid to capture control of its own oil industry and sell its oil and refined products in world markets at such prices as it might determine (Business Week, Sept. 27, 1952, p. 29, annexed).

64. Accordingly, defendants and said other interests made common cause with A.I.O.C. in boycotting Iranian oil, and, in that connection, declined to buy any Iranian oil from N.I.O.C. or from deponent while, at the same time, bending every effort to assist A.I.O.C. to supply world needs from other sources so as to keep Iranian oil off the market until Iran should capitulate (SONJ Ex. B-211).

65. At the same time, A.I.O.C. by newspaper announcements (SONJ Ex. W-660) and by letters addressed to deponent and his associates through A.I.O.C.'s counsel, Sullivan & Cromwell (SONJ Ex. W-659), gave notice that they would prosecute anyone who had the temerity to deal in Iranian oil, and they implemented that threat by seizing and condemning the tanker "Rose Marie" at Aden (Tr. 1597-98) and by tying up cargoes in Italy and Japan by litigation. (*Anglo-Iranian Oil Co.* v. *S.U.P.O.R.*, [1953] Int'l L. Rep. 19, 47 Am. J. Int'l Law 509 (1953) (Civil Tribunal of Venice 1953); *Anglo-Iranian Oil Co.* v. *Idemitsu Kosan Kabushiki Kaisha*, [1953] Int'l L. Rep. 305 (Dist. Ct. of Tokyo, High Ct. of Tokyo, 1953).

66. Upon information and belief, by the solidarity of their support of A.I.O.C. in the Iranian crisis, and by the hostile reaction which they had previously exhibited to

the nationalization of the Mexican oil industry, and, deponent believes, in less subtle ways, defendants made plain generally to the world and particularly to independent oil companies which were dependent on them for their crude and refined oils, and to tanker operators that they would rue the day that they ever bought or agreed to transport Iranian oil before the Iranian crisis was settled on defendants' terms.

67. When the Iranian crisis was settled, the settlement took the form of a surrender of Iran's nationalized oil industry to a Consortium of the very companies which had forced Iran to capitulate and the exclusion of all independents except for a 5% interest which was made available to them to obscure the appearance of monopoly (Plaintiff's Exs. C.S.-40).

68. Without repeating what has been stated in the first 58 paragraphs of this affidavit, as evidence of the effect of defendants' control of the oil industry, both international and domestic, upon deponent's endeavors to prosecute the business described in said paragraphs, deponent cites the following:

(a) Deponent and his associates were denied a letter of credit by the Chase Bank, called for by Consolidated's contract, on June 19, 1952, notwithstanding that all of the terms had been agreed upon, all of the conditions met and the collateral tendered (Tr. 1881-83; 1891; 7066-67; SONJ Ex. W-270).

(b) Every tanker owner, operator and broker contacted

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by deponent and his associates expressed a fear of threats and reprisals should he agree to transport Iranian oil (Tr. 1868-70; 3298-3301).

(c) Deponent and his associates were unable to secure insurance in the Western Hemisphere to cover Iranian oil (Tr. 2756-58).

(d) Deponent and his associates were able to provoke immediate interest in the purchase of Iranian oil, either for cash or on a barter basis in a great many quarters, but never with defendants or other major domestic companies (SONJ Ex. B-211) except Cities Service, and in every case when interest was manifested, it withered before agreement was reached, no matter how favorable the price.

(e) Even Cities Service, which faced a daily shortage of 100,000 barrels of crude oil and which was looking for a Middle East source (Tr. 5272; 5584; 10196), dropped all interest in Iranian oil after going to great lengths in pursuit of it (Tr. 6400); dropped it without any explanation to those who were responsible for providing Cities Service with the opportunity, which it coveted, to take over the management of the entire oil industry in Iran (Tr. 6325).

(f) Even Richfield Oil Company, which also faced a daily shortage of 20,000 barrels of crude oil (Tr. 399) and showed the keenest interest in covering this shortage with Iranian crude oil under Consolidated's contract (Tr. 392; 3650), dropped it notwithstanding the highly favor-

able landed cost of Iranian oil on the West Coast (Tr. 5669) and, again, without any explanation to those who had the capacity to fill its needs (Tr. 4272-73).

69. The price under Consolidated's contract was right, the opportunity to secure an enormously valuable supply of Middle East oil on favorable terms was obvious, but, as Herbert Hoover, Jr., explained to Messrs. O'Brien and Hill of Cities Service on February 19, 1954, when the Consortium was in the process of formation, "A.I.O.C. took the attitude that any company who participated in the deal [the Consortium] would have to have two qualifications: (a) be a producer of Middle East crude so that they could cut back their production to make room for the Iranian oil; and (b) be a marketer in the Eastern Hemisphere since that was a normal market for Iranian crude and products" (Plaintiff's Ex. C.S.-40). Deponent did not meet these qualifications, nor did anyone else except the seven international majors. As Hill of Cities Service put it, the proposed consortium was "creating a monopoly of substantially all world oil reserves in a few large companies." (Ibid) "Mr. Hoover suggested the possibility of anouncing this opportunity for the independents at the same time the plan is officially approved in order to remove some of the monopoly sting" (Id.).

70. Deponent is grateful for the opportunity which this Court has given him by its order of May 22, 1964, to set forth the facts insofar as they are presently known to him and only regrets that he has not sooner submitted such an affidavit as this. If the Court concludes that some phase of

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plaintiff's position is still unclear or if deponent has again failed to comply with the Court's direction, he will attempt to respond to whatever further direction the Court may give him.

Wherefore, deponent respectfully prays that defendants' motion to dismiss the complaint and for summary judgment be denied.

/s/ GERALD B. WALDRON
Gerald B. Waldron
Plaintiff

(Sworn to June 9, 1964).

Notice of Motion, Dated September 15, 1964

(11922)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Sirs:

PLEASE TAKE NOTICE that the undersigned will bring the within motion on for hearing before Honorable William B. Herlands, United States District Judge, at a time and place to be determined by the Court.

Dated: New York, New York
September 15, 1964

Yours, etc.,

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(11923)

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Notice of Motion, Dated September 15, 1964

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Motion for Discovery, Dated September 15, 1964

(11924)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

MOTION FOR PRODUCTION OF DOCUMENTS AND ORAL DEPOSITIONS

Plaintiff moves pursuant to Rule 56(f) of the Federal Rules of Civil Procedure for an order directing:

1. The production of all documents in the possession, custody or control of Cities Service relating to Cities Services efforts to obtain an interest in or otherwise to deal in Iranian oil during the preiod June 1952 through January 1955, including any written statements by employees or agents setting forth their activities on behalf of Cities Service in respect of said efforts during said period; and

2. The production of all documents in the possession, custody or control of the other defendants to this action, or any of them, relating to Cities Service's efforts to obtain an interest in or otherwise to deal in Iranian oil during the period June 1952 through January 1955; and

3. The production of all documents in the possession, custody or control of Ray Carter relating to his efforts to assist Cities Service, plaintiff or others to (11925) obtain an interest in or otherwise to deal in Iranian oil during the period from June 1952 through January 1955,

including any written statements, comments or transcripts prepared or assisted in by Carter for any defendant herein after commencement of this action concerning said efforts; and

4. The examination of Ray Carter by oral deposition in respect of his efforts to assist Cities Service, plaintiff or others to obtain an interest in or otherwise deal in Iranian oil during the period from June 1952 through January 1955; and

5. The examination of defendants by oral deposition of such of their employees or agents as may to the Court seem just and proper upon plaintiff's application after the document production herein shall have been made.

The persons directed to produce the foregoing documents have possession, custody or control of them; it is believed that each of the documents contains evidence relevant and material to plaintiff's opposition to Cities Service's pending motion for summary judgment; Ray Carter had extensive dealings with Cities Service, plaintiff and others in connection with Cities Service's efforts to obtain an interest in or otherwise to deal in Iranian oil during the period from June 1952 through January 1955 as is more fully shown in the affidavit of Samuel M. Lane, submitted herewith.

CASEY, LANE & MITTENDORF
Attorneys for Plaintiff
Office and P. O. Address
26 Broadway
New York 4, New York

Affidavit of Samuel M. Lane, Dated September 15, 1964

(11926)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SUPPLEMENTAL AFFIDAVIT IN OPPOSITION TO CITIES SERVICE'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S MOTION FOR ADDITIONAL DISCOVERY

State of New York,
County of New York—ss.:

SAMUEL M. LANE, being duly sworn, deposes and says that he is an attorney and counselor at law and a member of the firm of Casey, Lane & Mittendorf, attorneys for plaintiff in the above-entitled action, and submits this affidavit in opposition to the pending motion of defendant, Cities Service Company, for summary judgment, and alternatively, in support of plaintiff's application for further examination and discovery in opposition to said motion.

1. The first purpose of this affidavit is to demonstrate that, through the limited examination of the surviving Cities Service officers, Watson, Frame, and Heston, who participated in Cities' Iranian venture and the limited discovery of Cities' documents in that connection, sufficient evidence has been adduced to defeat Cities' pending motion (11927) for summary judgment. In the event that the Court does not agree that sufficient evidence has now been presented from the mouths of these three witnesses

and their papers, the second and alternative purpose of this affidavit is to support plaintiff's application for further and more meaningful examination and discovery in aid of his opposition to Cities' motion.

2. The principal elements of plaintiff's claim against Cities Service, as plaintiff himself has testified and as the documents produced by him show, may be briefly summarized as follows:

(a) Cities was short of crude oil (Printed Transcript of Depositions, Page 6069, hereinafter referred to by page number alone);

(b) Cities wanted to acquire Middle East production (6071);

(c) Through Carter, a trusted former Cities employee, Cities entered into negotiations, first with plaintiff's associate, Bentley (8842), and then directly with plaintiff himself (6161), to secure an invitation from Prime Minister Mossadegh to Cities' president W. Alton Jones, to inspect the nationalized oil facilities in Iran with a view to reactivating the Iranian oil industry (6163);

(d) Cities agreed to reimburse plaintiff for his expenses (6195) and to compensate him handsomely if he secured such an invitation and an arrangement was made between the National Iranian Oil Company and Cities (SONJ Ex. W-343; 6166);

(11928)

(e) Cities enjoined plaintiff, his associates, and its own personnel to maintain utmost secrecy with respect first, to securing the invitation (6182) and, second, to exploiting it (6222);

(f) Plaintiff and one of his associates went to Iran at Cities' expense and secured the desired invitation (6202);

(g) Elaborate steps were taken to give the invitation the appearance of spontaneity (6203-04);

(h) Jones accepted the invitation (6210-11);

(i) Plaintiff and his associates returned to Iran in advance of the Cities party to secure appropriate accommodations (6229);

(j) Jones followed with a team of experts: Frame for refining, Heston for production, and Whetsel for transportation. He also took Robeson, his secretary (6228-29);

(k) The experts, after inspecting the oil fields, the refinery at Abadan, and the docks there and at Bandar Mashur, reported that, contrary to popular belief, there had been no sabotage and that all of the installations were well-maintained (6237; 6250);

(l) Jones on the one hand and the Iranians on the other were eager to have Cities take over the management of the Iranian oil industry, each for their own interest (6220; 6236; 6243);

(m) Jones told plaintiff, the Iranians, and the press that he was not afraid of British opposition to the reactivation of the Iranian oil industry and the sale of Iranian oil in world markets (Pltf's Exs. 136A-H; 6211);

(n) Jones told plaintiff, the Iranians, and the press that tankers were a serious bottleneck but that this problem could be overcome in time (6237-38);

(o) Plaintiff, leaving the Cities party in Paris, returned to New York to see what could be done about tankers, and found that, for such a company as Cities, substantial tonnage could be assembled in relatively short order (SM Ex. B-1010; CS Ex. B-1029; 6287);

(p) At that point, plaintiff was told that Cities had no interest in Iranian oil (6325);

(q) Thereafter, Cities interfered with plaintiff's efforts to market Iranian oil (6086-87).

3. The two Cities witnesses who could have been of greatest service in corroborating plaintiff's testimony were W. Alton Jones, Chairman of Cities' board, and R. Victor Whetsel, head of foreign exploration. During the pendency of this action, and while plaintiff was stayed by order of this Court from examining them, they died. However, the testimony of Watson, Frame and Heston supports to a significant degree practically every material element of plaintiff's case and so do the handful of documents which Cities' counsel produced. The prior deposition of Cities' general counsel, Hill, is described in an earlier summary, submitted to the Court in August, 1963.

(a) *Cities' need for a source of crude oil.*

It is axiomatic in the oil industry that unless an oil company owns enough oil in the ground to meet the bulk of its daily refinery needs, it is at the mercy of (11930) the big international suppliers, viz B.P., Shell, Esso, Socony, Socal, Texaco and Gulf (Federal Trade Commission Staff Report, *The International Petroleum Cartel,* issued by the Select Committee on Small Business of the Senate, Committee Print No. 6, 82d Cong., 2d Sess. (1952) at pp. 32-

33). In 1952 Cities owned less than half of the crude oil production that it needed to meet its daily requirements (10196) and was, therefore, a big buyer of crude (10482, 10488). The shortage amounted to perhaps 100,000 barrels per day (10196), with 20,000 to 30,000 barrels per day of this shortage on the East Coast (10782). Cities then owned no foreign production in the Middle East (10477) or, apparently, anywhere else (10987).

(b) *Cities' desire to purchase Middle East production.*

Cities has tried for years to obtain Middle East production (10477, 10480, 10482, 10780). In 1948, Jones and Watson talked to Col. Drake, chairman of the board of Gulf, about buying part of Gulf's interest in Kuwait (10477). They tried again without avail in 1951 (10780), but made no further move in the direction of acquiring Iranian production until plaintiff and his associates entered the picture in June, 1952 (10482-3), although Cities' interest in Iranian oil was "considerable" (10483, 10493), and Jones may have gone over the possibilities from time to time with Nakasian and Rieber (10484). Samuel Nakasian, Esq. is a member of the New York bar who, deponent is informed, was consultant to the Iranian government on oil matters during certain periods (11931) of the nationalization crisis and was working on a plan for the organization of a group of American independents to take over the management of the Iranian oil industry. Torkild "Cap" Rieber, who had been removed as chairman of the board of Texaco because of his Nazi sympathies (10296; Engler, *The Politics of Oil,* 200 (1961)) was active at this time as advisor to the World Bank in its attempt to solve the Iranian crisis (Walden, *The International Petroleum*

Cartel In Iran—Private Power And The Public Interest, 11 Journal of Public Law, 64, 103-4 (1962)), and later served as oil advisor to the Iranians (O'Connor, *The Empire of Oil,* 330 (1955)).

In Watson's opinion, oil could be produced in Iran "about as cheaply * * * as anywhere in the world" (10579). He testified: "If we could get a concession well located geologically, it would be the best hunting ground we thought in the world for giving us a long range crude supply, particularly if we could get it on the basis of the last concessions they had granted, which is a 50-50 basis. We could have reason to expect to put oil on board a tanker at costs somewhere approaching the most efficient oil field in the world, the Bergan Field in Kuwait. We didn't know anywhere else in the world that the prospects looked that bright to us" (10578).

(c) *Cities' negotiations with plaintiff and his associates to secure an invitation from Prime Minister Mossadegh.*

Frame confirms that he and Lowe, who was then "in charge of supply and distribution within Cities (11932) Service Petroleum, Inc." (10294), met with Carter, the trusted former Cities' employee, and plaintiff's asociate, Bentley, in a private dining room at the Lexington Hotel in June, 1952 (10293, 10295) where they had "quite a discussion of the Iranian situation" (10299). Frame gathered the impression "that Carter and Bentley felt that they had contacts with the then government of Iran" (10299) but "that is about the sum and substance of it" (10299). He claims to have no recollection of any subsequent meeting or that the subject of a possible invitation from Prime Minister Mossadegh was ever discussed (10304). In the

light of Bentley's contemporaneous memoranda of the meetings (SONJ Exs. B-253-57; 296, 297, 300, 302) and the fact that, following these meetings, plaintiff and his associate, Nelson, went to Iran, secured an invitation to Mr. Jones from Prime Minister Mossadegh and returned immediately to New York with it, Frame's asserted lapse of memory is, in deponent's opinion, incredible. But, at least, he corroborates the fact that there was a meeting which he and Lowe attended with Carter and Bentley in a private dining room at the Lexington Hotel at which contacts with the Iranian government were discussed (10295), and he denies none of the facts to which plaintiff and his associates testified with regard to their negotiations looking to the Mossadegh invitation (10304-05).

(d) *Cities agreement to reimburse plaintiff for his expense and to compensate him if he secured the invitation.*

Watson dances a jig on the question of Cities' agreement to reimburse plaintiff for his expenses in going (11933) to Iran to seek the desired invitation, but the net effect is to corrborate plaintiff's testimony that Cities agreed to foot the bill. Watson says that Carter was to finance the trip but that Lowe was to see that Carter was reimbursed through brokerage commissions from Cities. 'Indirectly I am confident we did pay their expenses through Carter * * *" (10673).

Watson did not attend the Echo Lake Country Club dinner meeting with Lowe, Carter, Waldron and Nelson at which plaintiff asserts he was promised compensation at the rate of 1¢ to 2¢ a barrel (SONJ Ex. W-343; 6163). Nor does he have any recollection of having discussed the meeting with Lowe afterwards (10525). He, therefore,

is not in a position either to admit or deny that the promise was made, and his assertion, twelve years after the event, that he would not have agreed to any such compensation (10533) is of no probative effect. Obviously, plaintiff and his associate, whose financial stringencies have been made so much of by some of the defendants in this litigation, did not agree to make the trip and take the risks for love alone.

(e) *Cities maintained strict secrecy with respect to the Iranian venture.*

Plaintiff's testimony that Cities' Iranian venture was shrouded in the most complete secrecy is corroborated a hundred fold by word and deed.

Watson's memorandum of August 8, suggesting what Cities might undertake in Iran is marked "SECRET—DRAFT—SECRET" (Pltf's Ex. CS-94).

(11934)

A secret cable code was prepared (Pltf's Ex. CS-100) and used (Pltf's Exs. CS-102B, 104B, 110; 10590).

Each member of Jones' party was cautioned to maintain secrecy (10340, 10893, 10618), and even communication by the members of the Cities group with their wives was cut off (10899).

The Cities team flew to Iran in separate groups in order, no doubt, to minimize attention, Waldron, Nelson and Carter going first, Heston and Whetsel following, and Jones, Frame and Robeson bringing up the rear (10882).

Upon their arrival in Tehran, the identity of the members of the Cities group was, at first, withheld from the press (Pltf's Exs. CS-136A, 136D) and elaborate precau-

tions were taken to avoid contact with the press (Pltf's Exs. CS-136A, 136E).

Not only were the members of the Cities group admonished to keep quiet about their trip (10618, 10620, 10893, 10340) and to refrain from talking to reporters (10619-21), but Cities, itself, released a most misleading statement to the press in New York (Pltf's Ex. CS-103) and refrained from answering a series of pointed inquiries submitted by the Oil and Gas Journal (Pltf's Ex. CS-113).

(f) *Cities endeavored to lead others to believe, contrary to the fact, that the invitation was unsolicited.*

Plaintiff's testimony that the invitation was made by Cities to appear unsolicited is corroborated by Jones' statement to the press in Iran that it was "entirely unsolicited" (Pltf's Ex. CS-136G) and by his statement to (11935) the Honorable Oscar Chapman, Secretary of the Interior, on August 12, 1952, when he wrote,

> "You will understand that the Mossadegh invitation came unsolicited * * *" (Pltf's Ex. CS-95).

In truth, the idea and even the form of the invitation were generated in New York (Pltf's Ex. C-127). First revelation of the truth came from a spokesman for the Iranian government who informed the Iranian press, in direct contradiction of Jones, that Jones had asked to be invited to Iran (Pltf's Ex. CS-136E). Watson's efforts, in the face of the overwhelming evidence to the contrary, to square with the truth the statement made by the man whom, obviously, he idolized (10502, 10534), is so grotesque (10603) that the reader is left in doubt that there is anything that such a witness has said that can be relied upon.

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Watson's pitch was that the invitation was not solicited by Cities because it was originally Carter's idea (10495); all Cities did was "indirectly" to pay the expenses (10673), and supply "certain reading matter" (biographical material in praise of W. Alton oJnes as the head of the greatest independent oil company in America!) (10603). He insisted that Jones, himself, was kept in ignorance of what was going on (10603), until the bird was in hand (10478). The falsity is transparent.

(g) *Plaintiff and his associate, Nelson, went to Iran and secured the invitation.*

This has never been disputed. Even Watson admits it (Pltf's Ex. CS-99; 10603).

(11936)

(h) *Jones accepted the invitation.*

This took place, of course, only after Jones had misled Secretary Chapman as to the origin of the invitation (Pltf's Ex. CS-95). A copy of the acceptance letter, supplied to plaintiff's counsel after the close of the deposition, is annexed hereto as Exhibit A.

(i) *Plaintiff and his associates returned to Iran in advance to secure, and did in fact secure, suitable living accommodations for Jones and his party in Tehran.*

This is admitted (10616).

(j) *Jones and his experts followed.*

This is admitted (10882).

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(k) *The experts reported that there were no impediments to an immediate resumption of operations.*

Frame found the great refinery at Abadan in good shape (10362); Heston found the oil fields and pipe lines in good shape (10908); and Whetsel reported the docks and loading facilities at Abadan ready for shoal draft vessels and at Bandar Mashur for deep draft vessels (Pltf's Exs. CS-106, 107; 10363). The difficulties attendant upon increasing production of crude and refined products were considered and found not to be insurmountable (Pltf's Exs. CS-106, 107; 10908).

(l) *Jones was eager for Cities to take over the management of the Iranian oil industry, the Iranians were eager to have Cities do so, and neither he, nor they, wanted Anglo-Iranian or the other Cartel Companies to take over.*

What the Iranians wanted they stated in their invitation (Pltf's Ex. CS-99) and is so obvious it goes (11937) without saying (10356).

What Jones and the other Cities executives wanted is also plain enough, no matter how hard the survivors now try to obscure it. The Mossadegh invitation, apparently for the first time, presented Cities with the opportunity to secure a position in the Middle East (10578), in fact, to play the major role in Iran (10566).

Cities' plan, from the very outset, was to organize and lead a consortium of independent American oil companies which would manage the Iranian operations (10565), taking payment in oil (10574), and anticipating opportunities to secure valuable oil concessions (10578). Companies already established in the Middle East were to be excluded (10572). Anglo-Iranian was to be compensated for its

expropriated Iranian properties through the sale of oil, and this, at the same time, would provide markets and transportation for the output (10569).

Thus, Watson's secret memo of August 8, 1952 (Pltf's Ex. CS-94), starts with the premise that the Iranians and the British can never reconcile their differences, and advocates that "American oil companies only which have no present interest in the Middle East" "furnish the necessary technical and supervisory personnel" and take over the management of Iranian oil operations under a contract which would give the managers not only a long-term option to purchase crude oil "at a discount under going prices for similar grades in U.S. after allowing for changes in import duties and transportation costs" but would also give them "first refusal on any future concessions for oil exploration within the country". The memo concludes with the (11938) suggestion that if the British Government and the Anglo-Iranian Oil Company, which controls the transportation and markets for Iranian oil, will cooperate, it ought to be possible to work out an arrangement "under which a satisfactory percentage of the avails of operation would be paid to the British on account of their former properties".

Under this plan, "[t]o assure definite responsibility one company [was] to have 51% interest" (Pltf's Ex. CS-94). That company, obviously, was Cities Service. Watson's unwillingness to concede that this was the case only throws doubt on his credibility (10565). Asked about his memo (Pltf's Ex. CS-94), Watson testified, "Mr. Jones, I believe, shared my views [that Iran was the best hunting ground in the world for oil]. We thought it was one way in which we could do a service over there and get the

first refusal on some of the area that wasn't covered by the Anglo-Iranian concession, it might be very valuable to the company" (10578). Finding oil in the ground for Cities, said Watson, "was my main interest, and I think Mr. Jones shared my views" (10578).

On August 12, 1952, four days after Watson's secret memo, Jones wrote to Secretary Chapman (Pltf's Ex. CS-95) to tell him of the invitation from Prime Minister Mossadegh and to ascertain the attitude of the United States Government towards his acceptance of it. Although Watson hedged on whether the letter was actually delivered to Chapman, he testified that Jones presented the problem "pretty much the way he has written this letter." (10605). In this letter, Jones suggests that Cities "could successfully undertake the supervision of the rehabilitation and (11939) reactivation of the oil properties in Iran" and that, if Cities were to do so, it would want the "cooperation of the British Government and the Anglo-Iranian Oil Co." He suggests that in the reactivation of the Iranian oil industry and the re-entry of Iranian oil in world markets "lies the only hope for a reasonable payment to the British for their properties in Iran", but that "[t]here may be some reluctance on the part of a number of oil companies that have been recently enjoying added prosperity by reason of the distress of the Anglo-Iranian Oil Co. to cooperate in any settlement of the dispute" (Pltf's Ex. CS-95). Here, then, are repeated the major elements of Watson's plan, viz., operation of the Iranian industry by Cities, exclusion of companies with Middle East interests, and, with cooperation from the British in transportation and marketing, eventual com-

pensation from oil sales to be paid to the British for their expropriated properties.

Jones apparently gave further thought to the problem of transportation while en route to Iran, for he called Watson about it on the telephone from Amsterdam (10631), after which Watson cabled to tell him what Cities' experience had been in taking cargoes from Abadan, and how much oil Cities, itself, could be expected to transport. The cable stated that Cities could obtain tankers to handle 20,000 parrels per day by the first of 1953, 100,000 barrels per day by the end of 1953, and 200,000 barrels per day by the end of 1954 (Pltf's Ex. CS-101).

The next reliable evidence is found in the drafts of the preliminary report to Prime Minister Mossadegh (Pltf's Exs. CS-106, 107). The gist of this report, which may or may not have ever been delivered to Mossadegh (10730), (11940) is that the fields, pipelines, refinery and loading facilities were all well-maintained; that operations could be immediately resumed on a modest scale; that markets could be found for relatively small amounts of oil in the United States; and that, over a period of years Iranian oil could re-establish itself in world markets, but that if the Iranians wished to restore large scale operations in short order, without taking the time and spending the money to replace British equipment and to obtain spare parts, to replace British tankers, and to find new markets, they would have to reach some accommodation with the British. "[A] reasonably prompt and satisfactory solution of the Iranian oil problem is dependent upon some arrangements being made between the Iranian government and the British whereby Iranian petroleum is sold to the

British and transported and sold by them in the previous channels" (Pltf's Exs. CS-106 and 107, at p. 13).

At first blush, this draft report, which, according to Frame, represented his and Heston's thinking more than Jones' and Whetsel's, who were more eager to go ahead without regard to the British (10912), would seem to take Cities out of the Iranian picture, and that is the way Frame now interprets it (10367). In fact, it does not, for Cities remained keenly interested (Pltf's Exs. CS-124, 125A and B; 10823).

This difference of opinion, was a question of degree more than anything else and resulted in an accommodation of views which are expressed in what appears to (11941) be Jones' final report to the Prime Minister dated October 31, 1952 (Pltf's Ex. CS-119). How this accommodation of views was reached can be reconstructed by reading the preliminary draft, dated October 10, 1952 (Pltf's Ex. CS-115), Whetsel's criticism of it, dated October 17, 1952 (Pltf's Ex. CS-116), and the intermediate draft, dated October 27, 1952 (Pltf's Exs. CS-117, 118).

In the final report (Pltf's Ex. CS-119), which is by far the most complete and carefully drawn of the whole series, each of the experts, Frame, Heston, and Whetsel reviews the area within his special competence; each in turn speaks well of the condition of the facilities and the competence of the operating personnel; each reviews the problems which will have to be faced before reactivation of operations can be accomplished on a large scale; and each indicates how American assistance should be utilized. Jones then adds a "General Summary" which emphasizes that any quick reactivation of the Iranian oil industry depends upon selling Iran's crude oil and Abadan's refined

products in the Eastern Hemisphere which, in turn, depends upon British transportation and British markets. He then winds up the report with recommendations for action, which constitute a refined version of Watson's original plan but incorporate for Jones a larger measure of responsibility (Pltf's Ex. CS-94).

To rehabilitate the Iranian operation fully and quickly, Jones recommends that a mixed arbitration (11942) committee of British and Iranian representatives be appointed under the chairmanship of "an experienced U.S. oilman" (presumably himself) to adjust and settle all mutual claims and that, if agreement is reached, "the National Iranian Oil Company of Iran enter into an agreement with an American oil company [presumably Cities Service] to secure the necessary personnel for the reactivation and maintenance of the Iranian oil industry, and to encourage the long range development of Western Hemisphere markets" (Pltf's Ex. CS-119, at pp. 36-37).

For a long term solution, in the event that agreement between the British and the Iranians failed of achievement, Jones recommends that "the National Iranian Oil Company endeavor to enter into a long term agreement with an American oil company [presumably Cities Service] to purchase Iranian crude oil in the maximum amount possible . . . and to secure the necessary personnel, technical assistance and help in the acquisition of the needed repair and replacement materials" Pltf's Ex. CS-119, at p. 37).

In short, whether Iran secured British help in re-establishing her products in Eastern Hemisphere markets, or whether she remained forever deadlocked with the British; whether she went at it the quick, easy way, or took the

slow painful route which Mexico had traveled with the aid, it should be said, of Cities Service, she should have an American oil company manage her facilities. (11943) That company, of course, should be Cities. If the price was right, Jones indicated that perhaps twenty percent of the 1,000,000 barrels per day crude oil productive capacity of Iran could find a market in the United States in the short-term future, and this "could rather quickly supply a substantial increase in revenues to the Iranian government" (Pltf's Ex. CS-119 at p. 31).

That Jones' interest in Iranian oil continued unabated is shown by the letter that he wrote to Abbas Parkhideh, chairman of the Sales Committee of the National Iranian Oil Company on December 22, 1952 (Pltf's Ex. CS-124), in which Jones said that he had been doing everything in his power to help find a solution to the Iranian problem and, in that connection, had conferred with members of the outgoing (Truman) administration and the incoming (Eisenhower) administration, oil executives, publishers, and newspaper people. Another thing that he did, at about that time, was to secure an opinion from the most distinguished lawyer of the day, John W. Davis, to the effect that no purchaser of Iranian oil need fear any legal proceedings by the Anglo-Iranian Oil Co., the British Government or any person claiming under either of them in any American court (Pltf's Ex. CS-137); and it is obvious that he was in touch with the incoming Secretary of State, John Foster Dulles, and the incoming Attorney General, Herbert Brownell, Jr., because he wrote identical letters to each of them on January 6, 1953, enclosing copies of the Davis opinion and tendering his services (Pltf's Exs. CS-125 A & B).

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(11944)

(m) *Jones was not afraid of British retaliation.*

Plaintiff's testimony that Jones was not afraid of British retaliation is corroborated by the report which Albion Ross filed with the New York Times on September 18, 1952, following Jones' interview with the press in Tehran (Pltf's Ex. CS-108) and by Frame who attended the press conference and described the report as "a reasonable statement" (10386).

(n) *Jones told plaintiff, the Iranians and the press that tankers were a serious bottleneck, but that this problem could be overcome in time.*

Plaintiff's testimony that Jones told him that tankers were a serious bottleneck is inferrentially corroborated by Watson's testimony that Jones telephoned to him from Amsterdam on that very subject on the trip over to Iran (10631) and, of course, by Watson's answering cable (Pltf's Ex. CS-101). It is also corroborated by the repeated attention given to the subject in all of the documents, beginning with Watson's secret memo of August 8, 1952 (Pltf's Ex. CS-94), and ending with the final report to Prime Minister Mossadegh, dated October 31, 1952 (Pltf's Ex. CS-119), which dealt with plans for reactivating the Iranian oil industry. Plaintiff's testimony that Jones also emphasized this problem in his talks with the Iranians is corroborated by the Albion Ross report in the New York Times (Pltf's Ex. CS-108).

(o) *Plaintiff's efforts to secure tankers.*

Plaintiff's testimony that he returned to New York ahead of the rest of the party to see what could be (11945) done

to line up tankers is not disputed. Watson may think that that was "a lot of hogwash" (10767), but that just goes to show that Watson did not like to believe what he did not want to believe. It cannot be disputed that plaintiff returned ahead of the rest of the party, and contemporaneous memoranda, given to Cities, show that he went to see Capt. Lemos about tankers and that Lemos indicated that, for a large company and a long term project, it would not be difficult to assemble very substantial tonnage in a reasonably short period of time (SM Ex. B-1010; CS Ex. B-1029).

(p) *Plaintiff was thereupon told that Cities had no interest in Iranian oil.*

Watson concedes that he may have told plaintiff on his return from Iran that Cities had no interest in Iranian oil (10777); and the fact is undeniable that Cities had no further dealings with plaintiff looking towards the acquisition of any interest in Iranian oil (6331). It does not happen to be the fact, however, that Cities lost interest in Iranian oil. Contrary to what plaintiff was told, Jones continued to take a "keen interest" in Iranian oil, as Watson, himself, admitted (10823); a special "Iranian room" was set up at Cities' New York office and put in the charge of a young Iranian woman who looked after the files (10883, 10970); and, in fact, Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies (Pltf's Ex. CS-40). Watson, himself, conceded that Cities would always have been interested in a long-term contract for Iranian crude oil at the right price (10777).

(11946)

(q) *Cities' interference with plaintiff's efforts to market Iranian oil.*

The interference with plaintiff's sale of 20,000 barrels per day of Iranian crude oil to Richfield, a company owned ⅓ by Cities and ⅓ by Sinclair, was not corroborated by any testimony elicited from Watson at the deposition, but something in the same category, which plaintiff had never had reason to suspect, did come to light. According to a memorandum dated September 24, 1952, produced from Carter's file during the examination of plaintiff (SONJ Ex. C-375), a cable was sent by Carter from Paris on September 21, 1952 to Oscar Chapman, Secretary of the Interior, saying that a cargo of aviation gasoline to be lifted by a U.S. Government tanker at the Abadan refinery had been offered to the United States Air Force, subject to clearance by the State Department. The object of the cable was to solicit Chapman's support in securing the desired clearance from the State Department. The memo goes on to say:

> "Mr. Jones read the cable before we sent it and ok'd its transmission. It was also suggested that Mr. Jones send a cable to Mr. Chapman urging his consideration of furthering the matter with the State Department but Mr. Jones felt that it was better to telephone Mr. Watson and in turn have him call Mr. Chapman concerning this tanker."

In other words, Jones was willing to do more to help Carter in this crisis than Carter had asked: he would personally call Watson. The great man was really putting his shoulder (11947) to the wheel for his friends to whom he owed so much.

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Consider, now, what Jones actually did. Instead of telephoning to Watson to call Chapman in support of the proposed sale, Jones sent a cable to Watson the following day (Pltf's Exs. CS-110 A & B) in which he said:

> "WATSON, AS YOU KNOW, CARTER IS TRYING DESPERATELY TO HOLD ONTO HIS CONTRACT AND HOPES SOMETHING WILL HAPPEN TO MAKE IT POSSIBLE FOR HIM TO PERFORM . . . AMONG OTHER THINGS HE HAS OPTION AND HAS OFFERED U.S. MILITARY CARGO OF AVIATION GASOLINE FROM ABADAN AND THROUGH SOME OF HIS REPRESENTATIVES IS TRYING TO EXERT PRESSURE THROUGH CHAPMAN OR SENATOR JOHNSON TO GET ACCEPTANCE . . . ON MY ARRIVAL HERE HE TOLD ME HE WAS STILL PURSUING IT AND HAD DRAFTED TELEGRAM TO CHAPMAN USING MY NAME. I ASKED HIM TO DELETE ANY REFERENCE TO ME AND TOLD HIM I WOULD COMMUNICATE WITH YOU . . . WOULD LIKE YOU TO REACH CHAPMAN AND TELL HIM I SERIOUSLY QUESTION WISDOM OF SUCH ACTION AND DO NOT WANT TO BE CONNECTED WITH IT IN ANY WAY."

Watson replied by cable the next day that he had delivered Jones' message not only to Chapman, but also to Warren (Pltf's Exs. CS-111 A & B), who was then Deputy Administrator of the Petroleum Administration for Defense (10684), and is now President of Cities.

No one can doubt the importance that the lifting of aviation gasoline by a United States Government tanker from Abadan would have had in relation to plaintiff's contract. Jones knew that Carter considered it desperately important. The psychological impact would have been terrific. Jones knew that Carter was counting on his support. Jones put Carter off by telling him he would telephone to Watson. Instead he cabled Watson

to tell Chapman that he seriously (11948) questioned the wisdom of the transaction; and the transaction died! (9683, 9789).

It would have been very easy for Jones to have disassociated himself from the avgas deal without killing it, but for some reason, "while not wanting to be put in position of interfering with his [Carter's] business" (Pltf's Exs. CS-110 A & B), that is exactly what Jones accomplished behind Carter's back.

Carter, poor gull, never knew what hit him. Two months later, while still pursuing the avgas deal, he confided to Jones that he planned to cable to Anthony Eden, British Foreign Secretary, to approve the lifting of aviation gasoline for military use and asked for Jones' approval. A copy of his note to Jones, found in Carter's papers, is annexed hereto as Exhibit B.

How easy must it have been for Jones subsequently to kill the sale to Richfield! (4272-4). A simple telephone call would have sufficed. The avgas incident proves what kind of a man Jones was.

4. To suggest, as Jones' apologists, Watson and Frame, do, that Jones went to Iran as the unselfish champion of the Free World to save Iran from Soviet Russia (10552) is too facile, too self-serving. Even Watson has to admit that there was also the possibility that something very valuable would come out of it for Cities (10542), and he was plainly peeved by the virtual exclusion of the independents, "we-the-people" (10572), from participation in the final version of the Consortium (10827; 10838-9). To suggest, as Frame does, that he and Heston talked Jones out of undertaking (11949) the reactivation of the Iranian

oil industry at the head of a consortium of American independents (Pltf's Ex. CS-94; 10833) is belied by the documentary evidence (Pltf's Ex. CS-119) and the undisputed fact of Jones' continuing interest (Pltf's Ex. CS-124; 10823). Why Jones, who was posing at the time as the friend of Iran, secretly scuttled plaintiff's propitious opportunity to break the Iranian boycott through the use of United States Government tankers to lift avgas from Abadan does not yet appear. To suggest, as Cities' counsel is so fond of doing, that all we have here is a business opportunity declined by Cities either because Cities found a more attractive business opportunity elsewhere, as, for example, in Kuwait, or simply because Cities did not choose to undertake it, begs the question. Enough has been shown, deponent submits, to indicate that Jones did not voluntarily relinquish so great an opportunity to vault his company into a dominant position in the oil world: he must have been stopped or induced to give up; and plaintiff is entitled, on the record as it now stands, to find out, if he can, how this was brought about. In this connection, it should be noted that Watson did not testify that Jones and others were not in contact with the Cartel Companies, who are defendants in this action, but only that he could not say whether they were or they weren't because he did not know (10602; 10631; 10738-9).

5. Discovery is indispensable in such an antitrust case as this where plaintiff must draw evidence of the conspiracy from his opponents' files. Plaintiff is doubly handicapped here by the death of such important (11950) witnesses as Jones, Lowe, and Whetsel, Cities' executives who played leading roles in the Iranian enterprise. In his

motion of May 8, 1963, plaintiff asked for the production of documents and the examination of witnesses in the following simple terms:

> "1. The production of all documents in the possession or control of Cities Service relating to Cities Service's efforts to obtain an interest in Iranian Oil during the period January 1952 through January 1955 including any written statements by employees setting forth their dealings with plaintiff and his associates in connection with Iranian Oil; and
>
> "2. The examination of Cities Service by oral deposition of Burl S. Watson, A. P. Frame and J. E. Heston."

6. The discovery actually granted by the Court in its order of July 9, 1964, limited plaintiff's discovery to conversations or communications between the deponent and some other Cities Service employee or between Cities and some other defendant.

This order proved inadequate for the following reasons:

(a) Cities interpreted the order to require the production of only those documents which on their face were, themselves, communications between the deponent and other Cities employees or between Cities and another defendant. If a document did not on its face demonstrate that it (11951) was a communication between the deponent and another Cities employee or between deponent and another defendant it was not produced even though the document may have been an adequate summary, aide memoire, diary entry or other statement of Cities' position vis-a-vis the subject matter of this claim. A letter written by Jones to another defendant or a memorandum of conference between Jones and another defendant would not be

produced because Jones was not the deponent. In the same vein, counsel would not produce a communication between one of the deponents and plaintiff or a member of his group, much less a communication between a Cities' employee, other than deponent, and a member of plaintiff's group. Because the witnesses examined were both forgetful and artful, and could not or would not recall more than was to be found in documents to which their attention was directed, a necessary condition precedent to any further discovery must be the fairest document production possible.

(b) In its order of July 9, 1964, the Court imposed a time limitation of June 11, 1952, to October 1, 1952, in respect of communications between Cities and any other defendant and a similar limitation of June 11, 1952, to November 1, 1952, in respect of internal communications between deponent and another Cities employee. At the time the Court heard counsel on the form the order should take, counsel for plaintiff argued that such time limitations were without basis in the record. The Court's reply was that plaintiff should begin with these periods and then, if he could, come back and demonstrate that broader periods were necessary. Based on the discovery thus far it now (11952) appears beyond question that the October 1, and November 1 limitations were inappropriate for the following reasons:

(i) Sometime after November 1, 1952, an "Iranian room" was established at Cities and staffed by an Iranian file clerk to serve as a central file for matters relating to Iran (10883; 10970).

(ii) Although Watson informed plaintiff in October,

1952, that Cities would not be interested in any arrangement involving Iranian oil (6329; 10777), what he meant by the statement was that Cities was not interested in purchasing a few cargoes of crude oil (10777). A long-term contract for Iranian oil would still have been of interest (10777). He added that Jones maintained a "keen interest" in the problem through 1953, and continued to talk with government officials in the United States and Iran about it (10823).

(iii) Frame testified that certain segments of the oil industry had criticized Jones and Cities for making the trip to Iran (10421). He said, however, that no discussions of this criticism took place within the Cities organization prior to November 1, 1952 (10423). Plaintiff testified that at or about the time of the American Petroleum Institute Convention, in November, 1952, Whetsel told him that the "big boys" called Jones in and threatened to cut off his supplies if Cities dealt in Iranian oil (6337). Defendant's counsel refused to permit any inquiry of the witness concerning his knowledge of the events which transpired at the November convention of the A.P.I. (10425).

(11953)

(iv) Watson and Hill testified that Samuel Nakasian approached Cities with various proposals for Cities to participate in a solution to the Iranian oil controversy (10106; 10484). These discussions took place in 1954 (Pltf's Exs. CS-42 & 43).

(v) Various Iranian officials visited Jones, Watson and Frame in the fall of 1952 (10443-45, 10751), and Jones talked with Dr. Saleh, the Iranian Ambassador to the United States (10750), and with Loy Henderson, the

American Ambassador to Iran (10752). He also talked with John Foster Dulles in October and November, 1952 (10752).

(vi) Cities has submitted several documents, dated after November, 1952, in support of its motion for summary judgment, but plaintiff has been denied the opportunity of examining the witnesses with respect to those documents in order to obtain information with which to oppose the motion for summary judgment. These items also serve to demonstrate the continued interest of Jones and Cities in Iranian oil after November 1, 1952, and were submitted by Cities for that purpose. Included among the documents are the following:

—A letter from Jones to Ambassador Henderson, dated November 24, 1952, requesting an interview to discuss the Iranian oil problem;

—A letter from Jones to Parkhideh, dated December 22, 1952, stating that "I am still vitally interested in your problem and have been doing everything in my power to help toward its solution." (Pltf's Ex. CS-124);

(11954)

—A letter from Secretary of the Interior Chapman to Jones, dated December 31, 1952, recounting Jones' activities in the Iranian controversy (Pltf's Ex. CS-96);

—Letters to John Foster Dulles and Herbert Brownell, Jr., dated January 6, 1953, setting forth Jones' proposals for a solution of the Iranian oil problem (Pltf's Exs. CS-125A & B);

—A legal opinion prepared by John W. Davis of Davis,

Polk, Wardwell, Sunderland & Kiendl, dated December 6, 1952, setting forth the rights of a purchaser of Iranian oil in the American courts (Pltf's Ex. CS- 137);

—Letter (apparently by Jones) to Prime Minister Mossadegh, dated July 10, 1953, which noted a "deep and continuing interest" in the controversy and offered proposals for a solution, attached hereto as Exhibit C.

(c) In its order of July 9, 1964, the Court omitted plaintiff's request for the production of written statements prepared by employees setting forth their dealings with plaintiff and his associates in connection with Cities' Iranian oil venture. On the examination it appeared that Heston, the most forgetful of all the Cities' witnesses to date, had in fact prepared such a resumé in the form of a letter which is now in the possession of counsel for Cities (10874). This document was prepared in 1956 only three or four years after the events in question (Pltf's Ex. CS-25A; 10875). Certainly it constitutes better evidence of what happened in 1952 than Heston's hazy recollection in 1964.

(d) During the depositions counsel for Cities repeatedly construed the Court's order of July 9, 1964, (11955) in a manner so arbitrary and narrow as to rob it of any meaning. Thus, for example, all questions in respect of Jones' contacts with Sandberg, a member of the Finance Committee of Royal Dutch Shell, a co-conspirator named in the complaint, were blocked on the ground that the order called only for communications between Cities and another defendant and not between Cities and a co-conspirator! (10692-95; 10901).

(e) Equally arbitrary was the instruction by counsel for Cities to the witness not to answer any questions in respect of Cities' efforts to obtain a participation in any consortium proposal other than the Iranian Oil Consortium as finally constituted (10439, 10451-3; 10821-2, 10825). The documents in this case demonstrate that nearly every effort to reactivate the Iranian oil industry involved the proposed cooperation of several companies. Some of these efforts were labeled consortiums, some were not. Some were labeled consortiums of independents, others were labeled consortiums of the majors, and still other consortiums of majors and independents. It is wholly artificial to say that all such activities must be put beyond the reach of discovery because they were not efforts to obtain a participation in the final vehicle. On this record neither the Court, nor plaintiff—and perhaps not even counsel for Cities—can tell when in time and by what events the Iranian Oil Consortium became sufficiently concrete so that one could seek a participation in it, distinguished from any of the other proposals that were its predecessors or alternatives.

(11956)

(f) Finally, after hearing Watson testify for five days that Cities' main interest was to get a concession for Iranian oil in the ground (Pltf's Ex. CS-94; 10479, 10493, 10552, 10578; 10730), defendant's counsel blocked attempts to inquire whether in fact Cities had actually negotiated for or obtained such a concession (10502, 10845, 10921, 10936-8). Plaintiff testified that during the trip to Iran, Jones had expressed an interest in obtaining a concession in Baluchistan, which was an area not covered by the

former A.I.O.C. concession (6240-1). Counsel for Cities, however, refused to allow plaintiff's counsel to follow this obvious lead, despite Watson's corroboration of plaintiff's testimony that a concession in Iran was Jones' main interest (10578).

7. In view of the death of Jones, Lowe, Shaw and Whetsel, and the inability of Watson, Frame and Heston to recall anything of importance to plaintiff's case which is not spelled out in the documents, it becomes necessary for plaintiff to examine Carter. Carter for over twenty years had been an employee of Cities. In 1952, he was serving Cities and other clients as an independent oil broker from an office in the Cities building (SONJ Ex. W-258; 10488, 10498). Because of his contacts at Cities, it was Carter who played the principal role in all dealings between plaintiff's group and Cities looking to the securing of the invitation from Prime Minister Mossadegh (10479, 10488, 10671). He attended the conferences about which Watson and Frame could recall virtually nothing (10298, 10300, 10305, 10307, 10525). (11957) He attended the dinner at the Echo Lake Country Club on the eve of plaintiff's departure for Iran when plaintiff's compensation by Cities was spelled out (10525): He went to Iran with plaintiff and Nelson on their third trip (Pltf's Ex. CS-98). He remained in Iran throughout the stay of the Cities group and returned with them to Paris (Pltf's Exs. CS-110 A & B). He took care of the reimbursement of plaintiff and Nelson for expenses incurred on the two trips which they made to Iran on Cities' behalf (10616, 10673). He was the prime mover on the avgas deal (Pltf's Exs. CS-110 A & B), and, in that connection, handled many

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of the contacts with the State Department and the Iranian Embassy in Washington (SONJ Ex. W-258). When plaintiff commenced the pending litigation, Carter made common cause with Cities and the other defendants to defeat plaintiff's claim. Not only did Carter turn over to the defendants copies of his papers but, deponent is informed, he also annotated for them the daily transcript of plaintiff's deposition and commented on the exhibits. Plaintiff should now have his own opportunity to determine whether Carter's documents and testimony support or refute Cities' motion for summary judgment. Carter is the only important surviving participant whose testimony has not been taken.

8. To step off plaintiff's discovery in aid of his opposition to Cities' motion for summary judgment, issue by issue, all the while restricting plaintiff to Cities' files and witnesses, is one way of controlling discovery, but, obviously, it is not the most efficient nor is it the fairest. Thus far, Cities' witnesses have been (11958) required to search their recollections only to the extent of accommodating their testimony to the few documents produced from Cities' own files. Faced with documents from the files of Cities' co-conspirators their task may be more difficult for them and more rewarding for plaintiff. With Jones dead and his files thus far not produced to plaintiff, the other logical place to seek documentation of his contacts with the other defendants is through the files and depositions of those defendants. The choice of technique is not between different but equal procedures, but different and unequal. It may well affect the actual testimony received. Jones may well have been less remote and discreet with those he considered his equals in the other defendant com-

panies than he was with his own staff, to whom he confided little that can now be recalled. Other oil company executives may well be less disposed than Watson, Frame and Heston to cast Jones in the role of altruist. By his own admission, and corroborated by Watson, Jones was contacting others in government and in the oil industry in respect of the Iranian oil controversy (Pltf's Ex. CS-95, 124; 10823). One way or the other, plaintiff has the right to discover evidence of Cities' wrongdoing in the files of Cities' co-conspirators before the pending motion is finally decided. Plaintiff should have an opportunity to test with evidence from the rest of the conspiracy Cities' self-serving disclaimers, before this Court accepts them.

9. Cities says it moves for summary judgment because it never joined the Middle East Oil Cartel, did nothing to interfere with plaintiff's efforts to realize (11959) on his business and property and does not want to be subjected any longer to the financial burden of this lawsuit. The flaw in its argument is that it could easily produce its Iranian files and then resist any further discovery if those files sustain the self serving claims heretofore made by Mr. Hill, Cities General Counsel, and the other executives who have been more recently examined. The Court has stated repeatedly that it will permit no harassment by plaintiff of defendants through unwarranted discovery. Cities need have no fear of producing its files, an act which costs it nothing. Plaintiff is not interested in harassment but, if one thing has been more clearly demonstrated by the recent depositions than anything else, it is that hostile witnesses to events which are long past cannot be relied upon unless there are contemporaneous

records with which to confront them. It should also be remembered that the only reliable records that can speak for dead men in a case like this are the files they accumulated in their lifetimes. It is therefore particularly important that access be given to the Iranian files left by Jones, Lowe, Whetsel and Shaw. Yet disclosure of those papers is the one thing Cities has resisted from the day it filed this motion. Surely it will be clear to the Court after reading the testimony of Watson, Frame and Heston in the light of the documents produced thus far that Cities has hidden more than it has revealed of what it did in pursuit of its Iranian oil venture. This Circuit disapproves of trial by affidavit, especially in conspiracy cases where so much depends on inferences to be drawn from (11960) the documents. Full and fair discovery is the way to substitute fact for inference.

WHEREFORE, plaintiff respectfully requests that Cities' motion for summary judgment be denied, or, alternatively, that plaintiff's motion for discovery in aid of its opposition to Cities' motion be granted.

SAMUEL M. LANE
Samuel M. Lane

(Sworn to September 15, 1964.)

Notice of Appeal

(12125)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110–223

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO, INC.,

Defendants.

Sirs:

PLEASE TAKE NOTICE that Patricia Waldron, as executrix of the last will and testament of Gerald B. Waldron, deceased, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 14th

day of September, 1965, in favor of the defendant, Cities Service Co., and against the plaintiff.

Dated: New York, New York
October 13, 1965

Yours, etc.,

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 23

PATRICIA WALDRON, ETC., PETITIONER,

vs.

CITIES SERVICE CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 3, 1966
CERTIORARI GRANTED JANUARY 16, 1967

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October 31, 1952 Report on Iranian Petroleum Situation (Pltf's Exh. CS-119)

[12184] REPORT ON IRANIAN PETROLEUM SITUATION

W. Alton Jones

Introductory

Pursuant to an invitation extended by His Excellency Dr. Mohammed Mossadegh, Prime Minister of Iran, under date of July 26, 1952, Mr. W. Alton Jones, President of Cities Service Company, together with four associates, visited Iran for the purpose of surveying the Iranian oil situation and forming conclusions with respect to actions necessary to rehabilitate and revitalize the oil industry under the Iranian Government's nationalization program.

This group arrived in Tehran August 23rd and departed September 20th. In the interim, extended visits were made to the oil fields, distribution centers, and to the refinery at Abadan.

Dr. Mossadegh and other governmental officials, as well as the officers and executives of the National Iranian Oil Company, were most cooperative to the end that every opportunity was extended for the group to study at close range the actual condition of the petroleum facilities within the country. This report is based upon such study and represents the best judgment of the individuals participating.

In submitting this report it is recognized that many of the Iranian governmental officials and executives of the National Iranian Oil Company are fully conversant with conditions existing in the world today, [12185] particularly as related to petroleum on an international scale. For this

reason effort has been made to limit the report to essentials rather than attempting to include masses of detail which at best would consist of reiterations of facts, figures, and statements with which undoubtedly they are already aware.

The report will present a summary of the inspection and observations regarding the Abadan Refinery by Mr. A. P. Frame; of the oil production activities by Mr. J. E. Heston; and of the transportation facilities by Mr. R. V. Whetsel. In addition, there will be a general summary section dealing with all phases of the Iranian oil situation and a listing of recommendations.

[12186] ABADAN REFINERY

A. P. Frame

The Abadan refinery has a crude running capacity of 550,000 barrels per day.

All the processing units at the refinery, except the lube plants, had been operating prior to the time the British left, although the catalytic cracking unit had only had about two months of reasonably uniform operations at that time.

At the lube plant the furfural unit had been operating for a short time, but the MEX unit and the clay contact plant had not operated due to mechanical difficulties.

In addition to the processing and the usual refinery auxiliary facilities, the Abadan refinery carries on very extensive housing, recreational, health and transportation activities. In effect, it operates a city of about a quarter of a million people, so that the personnel at Abadan is not directly comparable with U. S. refineries.

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Prior to nationalization, the total personnel at Abadan and associated manufacturing and shipping operations was as follows:

	Abadan	Mashur	Kermanshah	Total
British Supervisory Staff	1,702	108	24	1,834
Iranian " "	762	14	29	805
" Non-Supervisory Staff	2,581	96	136	2,813
" Skilled Labor	17,811	1,389	1,645	20,845
" Unskilled Labor	5,877	578	314	6,769
Total	28,733	2,185	2,148	33,066

[12187] Since the withdrawal of the British, there has been practically no change in the number of Iranian staff and labor.

At the present time the Abadan refinery is processing 23,000 barrels of crude oil per day. The only basic refinery processing units being operated at the time of the visit were one of the smaller Badger distillation units, one of the gasoline treating units, and one of the SO_2 units for kerosene production. All utilities, electricity, steam, water and air, are being run at fairly high capacity due to the housing demands.

In addition, efforts are being made to operate the MEX dewaxing unit and the clay contact plant of the lubricating oil facilities. No attempt has been made to run the furfural unit and the other two units are being run on raffinate produced over a year ago. During the past year the Iranians have repaired and put into operation one of the two dewaxing filters in the MEX plant. The other filter is in the process of being repaired. This repair job has been very complex and the Iranian mechanical people who put this filter in operable condition have done an excellent job.

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No other processing units are in operation nor is there any plan to put additional units into operation under present conditions, particularly since the refined product storage capacity is practically full.

From the rather complete inspection made of the refining facilities at Abadan, it is evident that these facilities have been maintained in excellent condition since the nationalization of the petroleum industry. There was no evidence of sabotage or neglect of the refining facilities and, in fact, the maintenance and clean-up work done by the refinery personnel since the shutdown indicates that the physical condition of the refining facilities is probably better now than it was when the facilities were shut down. Considering only the physical condition of the refining facilities, it is probable that the Abadan refinery could be put into almost capacity operation within a period [12188] of two or three months if other factors, such as availability of personnel and the necessary supplies of maintenance and repair material were available.

PERSONNEL

The present refinery staff at Abadan is composed of Iranians, who in most cases have been assigned to their present positions since nationalization. A study of the personnel organization charts shows that during the period of British management practically all of the top administrative and technical positions in the refinery were held by British staff members, and that now such positions as are filled are held by Iranian staff people. It is apparent, therefore, that regardless of the ability of the present refinery staff, they are lacking in experience in regard to their present duties.

October 31, 1952 Report on Iranian Petroleum Situation (Pltf's Exh. CS-119)

Despite this limitation all members of Mr. Jones' party were most favorably impressed with the abilities and personalities of the present Abadan refinery staff, and are of the opinion that the present staff, in general, is quite capable of administering the operations of the Abadan refinery at any level of capacity provided that additional staff personnel is provided to fill positions now vacant and provided properly qualified advisors are available to guide and counsel the Iranians until they have the opportunity to become more thoroughly acquainted with the responsibilities facing them.

Present Personnal Requirements

At the time of the visit to the Abadan refinery, the plant was processing about 23,000 barrels of crude oil per day, or operating at about 4% of capacity. Efforts were being made to operate the lubricating oil facilities under rather serious handicaps. It is belived that to secure satisfactory operation of the refinery under the present conditions there is a real need for about six technicians. Three of these should be men skilled in the various [12189] phases of lubricating oil manufacture, one a qualified steam and electric power-generating enginner, one an experienced instrument man, and a sixth man well qualified in refinery inspection techniques.

Full Capacity Personnel Requirements

To operate the refinery at, or near, its capacity would probably require an additional 300 trained refinery technicians and operators in addition to the present staff. For instance, in order to operate the catalytic cracking unit would require a full staff of trained operators totaling about

35 men. Other specialized units, such as the super fractionation facilities, the alkylation units, power generating facilities, etc., would also need trained operators totaling about 100. The rest of the foreign group would be administrative and technical engineers, skilled in various phases of refinery operations, who for the most would serve as advisors to individual Iranian staff people. The foreign operators would need to be taken directly into the refinery organization as operating people, as would a few of the technicians. The balance of the group could operate in an advisory capacity only.

Half Capacity Personnel Requirements

At a level of operations of the refinery of about 200,000 barrels per day, it is estimated that about 150 technicians and operators would be needed to supplement the present staff. This group also would be split about equally between operators and technicians.

MAINTENANCE AND REPAIR MATERIAL

In the design and construction of the Abadan refinery the British leaned heavily on American engineering firms. Consequently, a great deal of the refinery processing equipment is of American design. However, the British also followed a policy of substituting equipment of British manufacture in [12190] such facilities wherever such equipment could be substituted for that of American fabrication. As a result, most of such refinery equipment as pumps, air compressors, electrical and steam generating equipment, transportation equipment, etc., is, generally speaking, of British design and manufacture.

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The problem of securing replacement and repair parts for this British-manufactured equipment from other than the British manufacturer is almost impossible of solution. An investigation has been made as to the possibilities of obtaining spare parts for the British-manufactured equipment from American manufacturers. The specific parts investigated were those included in lists obtained from Abadan during the visit to Iran. This study has shown conclusively that in the great majority of cases it would be practically impossible for American manufacturers to supply such equipment due to lack of detailed fabrication drawings, as well as to the fact that the fabricating of small quantities of special orders becomes prohibitively expensive.

The securing of spare parts for equipment of American manufacture is less difficult but not necessarily simple. Certain American fabricators are loath to supply parts to the National Iranian Oil Company today for fear of offending the Anglo-Iranian Oil Company with whom they either are doing, or hope to do, considerable business. It is believed that such a difficulty could largely be overcome if the obtaining of such materials was carried out by some recognized American oil company as agent for the Iranians.

Present Maintenance and Repair Material Requirements

It is believed that so long as the refinery continues to operate at its present level it will be possible, by cannibalizing certain shutdown equipment and by manufacturing the necessary repair parts, to operate almost indefinitely.

[12191] There may be certain exceptions to this, particularly in the case of the lubricating oil facilities which it is desired to operate during this period in order to supply

internal demands. However, this is a relatively small operation and it should be quite feasible to secure spare parts for this equipment wherever they are of American manufacture, or to replace British-manufactured pumps, etc., with equipment of American manufacture. It is probable that such a policy will require a cooperative effort on the part of the Iranians and some American oil company to overcome the reluctance of certain manufacturers to risk the disapproval of the Anglo-Iranian Oil Company, as well as to be certain of obtaining materials of proper design and size.

Full Capacity Maintenance and Repair Material Requirements

If the Abadan refinery is to operate even close to its maximum capacity the repair part problem will become most serious. It is theoretically possible to overcome this problem by replacing British-manufactured equipment with equipment of American manufacture. However, it is estimated that such a program would cost at least twenty-five million dollars and would take three or four years to complete. A much more satisfactory approach would be the consummation of some agreement whereby the necessary repair and replacement parts for the British-manufactured equipment could be obtained directly from the manufacturer, this program to be coupled with a long range plan to replace any such equipment, as it becomes worn out, with equipment of American manufacture.

It is extremely doubtful if the Abadan refinery could operate at maximum capacity, or even close thereto, for more than a very few months unless a workable mechanism is devised for the securing of repair and replacement parts for the British-manufactured refinery equipment.

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[12192] *Half Capacity Maintenance and Repair Material Requirements*

At the half capacity level of refinery operations it is possible that the Abadan refinery might be able to operate for from six months to a year by improvisation and cannibalization of shut down equipment and only then with definite limitations as to the number and quality of the refined products yielded. However, at this level of operations also it would only be a matter of time until the refinery operations would be seriously handicapped through lack of the necessary repair parts.

[12193] Oil Production Operations

J. E. Heston

The principal oil fields of Iran extend along a northeast-southwest trend paralleling the Persian Gulf and approximately 100 miles east of the Abadan refinery. There are six fields producing oil and one capable of producing condensate. These fields are connected by pipelines with the refinery at Abadan and with the port at Mashur.

In addition, one field (Naft-i-Sha) is located on the Iraq border 300 miles northwest of Abadan. This field is connected by pipeline with the 2,300 barrel per day refinery at Kermanshah. A well is now drilling on a large structure at Qum, 70 miles south of Tehran.

The following discussion will be limited to the fields connected with the Abadan refinery since the other fields mentioned are of particular interest for the long term rather than the short term viewpoint.

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The fields are located on large broad anticlines formed by overthrusts in foothills of Zagros mountains and production is obtained from crevices in Asmari limestone of Oligocene-Miocene age. Producing section averages 600 to 1000 feet thick.

At present no exploration work is being conducted by the National Iranian Oil Company and their staff available for this work is relatively untrained. Geological and geophysical information is available in the local files which outlines a number of anticlinal structures (10 to 15) in southern Iran which have not yet been thoroughly tested. In some instances, wells have been drilled on these structures but have failed to [12194] find production because of mechanical difficulties or because of poor location on the structure at depths where the Asmari lime (producing horizon) is encountered. In many instances no wells have been on the structure at all. Only a very few wells have been carried deep enough in the entire area to test the Cretaceous lime. One well in the Lalli field (Lalli #2) has been completed in Cretaceous limestone.

Before drilling any additional test wells a careful study should be made of the basic geologic and geophysical information obtained by A. I. O. C. in order to evaluate the interpretations which they have made. Subsequently, test wells should be drilled on these structures at points best situated geologically. Simultaneously, more of the southern area should be surveyed by aerial photography, surface geology, and geophysics to locate additional structures. Testing by drilling should be conducted first in areas where the oil, if found, could be most readily utilized and marketed. Such an exploratory program should be conducted

in a manner that will permit keeping the efficient productive capacity as much as 25 per cent higher than the market demand.

Since N. I. O. C.'s exploratory staff has had limited experience and since N. I. O. C. should devote its primary efforts at the present time to training and developing its production staff, it is believed that the exploration program outlined above can best be accomplished by making a contract with some American oil company which already has a trained exploration staff.

The average production rate for the oil fields in 1950 was 655,000 barrels daily. Currently, this rate has been reduced to 42,000 barrels daily.

Reservoir performance indicates that the production of the fields could be safely increased to a rate of 750,000 barrels daily if adequate personnel and operating, repair, and maintenance materials were available. [12195] Anglo-Iranian Oil Company had planned to increase the capacity to approximately one million barrels daily by 1955.

Shortages of proper personnel and inadequate supplies of repair parts, transportation equipment, and power plant equipment make it inadvisable to try to produce the fields at the current capacity of 750,000 barrels daily. However, it is believed that production could be increased to a rate of 200,000 barrels daily at once. By augmenting the staff with trained and technical personnel from foreign sources and by arranging for a source of materials, this rate could probably be increased to a minimum of 500,000 barrels daily within two years.

A total of 383 wells have been drilled in the fields to date. Of these, 177 have been completed as oil producers and

turned over to the producing department. The status of these wells now is:

Wells Gone to Water or Gas	92
Wells Shut In but Available for Production	62
Wells Producing June 1952	23
Total	177

Of the remaining 206 wells, approximately 50% were completed as dry. The others are in various stages:

1. From 2 to 5 wells in each field are used as observation wells for reservoir performance.
2. Approximately 25 wells throughout the field have been drilled to the top of the pay but never completed.
3. Others have been drilled into the gas caps and shut in.
4. A number have been shut down prior to completion for mechanical difficulties that might be remedied.

The maximum production rates discussed above could be maintained for 18 to 24 months by using existing wells, by connecting up wells not now tied into production units, and by completing wells that were stopped during the process of drilling.

[12196] Drilling rigs in the field are adequate to complete the wells stopped during the process of drilling. In large measure the drilling crews needed to run these rigs are available locally. It appears that the most efficient way to get the supervisory staff needed for the rigs would be to

make a contract with a United States drilling contractor covering the drilling operations. If it is later deemed advisable for National Iranian Oil Company to conduct its own drilling operation the services of the drilling contractor, during the interim, would permit the training of local supervisory personnel.

MATERIALS AND EQUIPMENT

The equipment in the oil fields has been excellently maintained since nationalization. The small production rate during this period has permitted the staff and labor forces to concentrate on maintenance of equipment and installations.

Because of the low scale of operations, generally the depletion of supplies has not been serious even though no new materials have been received. Most urgent requirements at present are:

1. Equipment to complete Tembi Gas Turbine Power Station in Masjid-i-Sulaiman, consisting primarily of control panels and electrical equipment.
2. Transportation equipment, such as trucks and cars.
3. Repair parts and operating supplies.

It is believed, however, that production could be increased to 200,000 barrels daily immediately if there was assurance that a flow of operating supplies, repair parts, and transportation equipment could be started within six months. Because of the possibilities of breakdown of the old power plant at Masjid-i-Sulaiman, it is urgent that the new power plant be completed promptly regardless of the contemplated production rate.

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[12197] While the supply of line pipe is short and additional pipe will be needed to connect all of the wells that have been drilled, the need for this material will not be urgent until it is desired to increase production rates to the level existing prior to nationalization. At such time, of course, it will be necessary to provide for a normal flow of all materials into Iran.

PERSONNEL

Approximately 2,800 staff men and 15,000 laborers were employed in the oil fields area of Iran prior to nationalization, a total of 17,800 men. Of these, 1,300 were British, all of whom have departed. Most of the vacated positions have since been filled with Iranians.

The existing staff appears to be of exceptionally high quality. The key supervisors and technical men have university training, most of them having received their doctors or masters degree in European or American universities. However, a large number of these men have not been thoroughly trained in the field for the positions they are now filling.

If operations are started up for producing 200,000 barrels of oil daily with the intention of further increasing the production rate, a minimum of 50 high quality, technically educated and field-trained men should be sent to Iran. These men will have the dual responsibiltiy of advising the Iranian staff on their operations and of training Iranian supervisory and technical personnel. While this foreign staff is being hired and moved to Iran, a small group of specialists should be sent to the area to thoroughly review materials and personnel requirements and to assist

the Fields Manager and Production Manager in building up their organization. These men could be sent to Iran on [12198] a six months' basis. They should include:

1. *Oil Production Superintendent*

   Technically trained man with experience in supervision of oil producing properties.

2. *Drilling Superintendent*

   Should be provided by drilling contractor who might subsequently enter into contract for drilling all wells.

3. *Power Plant Specialist*

   Should make overall study of power requirements, of existing equipment, arrange for completion of partially constructed plants and arrange for preparation of study of power plant requirements at various oil production rates.

4. *Oil Field Construction Engineer*

   Must have experience in construction and operation of natural gasoline and recycling plants as well as general oil field experience.

5. *Petroleum Engineer*

   Should be a specialist in organizing a petroleum engineering department and have a thorough knowledge of reservoir engineering. The head of a petroleum engineering department from a uni-

versity with administrative ability and field experience would be ideal.

6. *Petroleum Geologist*

Should be particularly well qualified for organizing development and production geological department. Any exploration work for several years could best be handled by making a contract with some American company, such as ours.

7. *Transportation Superintendent*

Presently the position of Fields Transport Manager is vacant. It would be especially important to have a man from the United States to organize this department if it is decided to commence purchasing United States equipment.

[12199] The Fields Manager at Masjid-i-Sulaiman estimates that his present staff of supervisory and technical men will have to be increased by:

230 men for a production of 200,000 barrels daily
342 men for a production of 400,000 barrels daily
492 men for a production of 600,000 barrels daily.

It is believed that this estimate of manpower requirements is high. The highest production figure could be obtained by bringing in a small (about 100), but highly competent group from outside for advising and training present Iranian personnel, and new ones that may be hired. This small crew might have to be expanded later depending upon how rapidly the production rate were increased.

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[12200] Transportation Facilities

R. V. Whetsel

Under the heading of Transportation Facilities are including automotive transportation, pipelines, and marine loading facilities. No discussion is included in regard to tanker availability for the transportation of crude or products, since subject is covered under the general section of the report.

Automotive Facilities

The problem of maintaining adequate automotive transportation facilities is one of the most serious problems facing the National Iranian Oil Company at present. This is true first, because all petroleum operations are dependent upon automotive facilities for the movement of men and materials, and secondly, even with the limited scale of today's operations, the automotive transportation facilities are being operated almost at their original capacity since the number of employees of N. I. O. C. is but little changed from what it was prior to nationalization. Since early in 1951 no new automotive equipment has been obtained by the N. I. O. C. and only a very limited amount of repair parts for the existing equipment. It was quite apparent from an observation of the various types of automotive equipment now in use that unless extensive replacements are soon secured there will be a serious collapse in the automotive transportation system.

As a measure of the seriousness of this situation, the following table lists, by general types, the automotive equip-

ment which was scheduled for [12201] replacement in 1951 and 1952 at Abadan and Bandar Mashur only.

Type	No.
Passenger Cars	157
Vans	233
Ambulances	7
Buses	182
Light Trucks	443
Dump Trucks	8
Tank Trucks	5
Special Trucks	35
Cranes	1
Sub-Total	1,071
Trailers	121
Motorcycles	232
Bicycles	590
Motorcycle Sidecars	41
Bicycle "	24
Total	2,079

It is estimated that in order to take care of all operations of N. I. O. C., including the oil fields and the distribution system, the above list would have to be expanded by 50% and include an additional 150 tank trucks.

It is probably true that replacement of this automotive equipment, which is primarily now of British manufacture, could be obtained by substituting American-built equipment. However, such a replacement would probably entail a capital expenditure of seven or eight million dollars.

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It is believed that the present personnel in charge of maintaining the automotive fleet is well trained and adequate to service present facilities. However, if a substantial portion of the present fleet were to be replaced with American-built units it would probably be advisable to obtain the services of three or four automotive engineers experienced in the handling of the new equipment.

[12202] PIPELINES

The pipeline transportation systems from the various oil fields to Abadan and Bandar Mashur seem to be in excellent condition and on very short notice could be made ready to carry the normal crude output of 1950, which averaged 650,000 barrels per day.

The problem of repair and replacement parts for the pipeline systems is not as acute as in other types of transportation equipment since the pipelines have been, to a large extent, idle since early in 1951. It is apparent, however, that if full scale operations were resumed, as far as the pipelines were concerned, it would only be a relatively short time, possibly six months, before the availability of the necessary repair materials would become controlling as far as this transportation capacity was concerned.

PORT FACILITIES

There are three port facilities in Iran involved in the handling of crude oil or refined products. These are Abadan, Khosrowabad, and Bandar Mashur.

Port of Abadan

Shipping facilities at Abadan are situated near the refinery on the Shatt-el-Arab River about 40 miles from deep

water in the Persian Gulf. Navigation over the bar at the mouth of the river is controlled by the Port of Basrah (Iraq) Authority, which is responsible for keeping the channel open for ocean-going vessels.

By continuous dredging the channel is kept at 24 feet low tide and 34 feet high tide, and before nationalization A. I. O. C. could pass out six 12,000-13,000 ton tankers at each high tide. A T-2 was reported to have cleared the bar fully loaded in March 1951 during the high spring tides. Some lightering over the bar to large tankers was done by A. I. O. C. but the two 5,000 ton [12203] tankers used for this purpose were taken away by the British.

The channel from the bar to the loading jetties at Abadan is deeper. The water depth is kept at 30 feet low tide and 39 feet high tide by occasional dredging with three small grab dredges operated by the N. I. O. C.

When the British departed, they took with them ten sea-going tugs and there is now in the harber no equipment of this kind that can handle large tankers. They left behind three steam tugs of 230 tons each, several smaller river craft, a floating drydock capable of handling a 900 ton vessel, and a second that can lift a 56,000 barrel tanker. These are over twenty years old but maintained in good condition.

The buildings consist of a Seamen's Institute, an office building, and a machine shop tooled to repair marine equipment.

The present Marine Superintendent has been with the Marine Department many years in a subordinate position in A. I. O. C., but seems to be competent. He has 2,000 men on his payroll, about half of which are kept busy on maintenance. As a result, all equipment seems to be in

first class shape. He seems confident that he can handle an occasional tanker on short notice but expressed the need for one or two marine experts to make a complete survey of the port before shipments are started. He also supervises the marine activities at Khosrowabad and Bandar Mashur.

Loading facilities at Abadan consist of 15 oil loading jetties, each of which is so equipped that two or sometimes three grades of oil can be loaded simultaneously. Two other jetties are used for the import of general cargo and a third is utilized to load asphalt in drums. Electric pumps can load 2,000 to 6,000 barrels per hour of black oils and from 1,800 to 4,800 barrels per hour of light oils. Separate pump stations and pumps can load crude and each of several products to several loading jetties at one time. There are a total of [12204] 22 pump houses and 44 pumps, details of which were made available to the party.

About 1,100 men are now on the payroll of this department and are kept busy on maintenance. All equipment appears to be in fair to good condition and can be put into operation on short notice.

Khosrowabad

A fuel oil loading station is located at Khosrowabad on the river about twenty miles below Abadan. It consists of 4 loading jetties, 2 pump houses with 2 pumps in one and 3 in the other. Loading rate is about 5,200 barrels per hour. There is also a bunker station with one pump loading at all 4 jetties. The station is connected with Abadan by three 12" pipelines. The storage capacity is three 134,000 barrel tanks and a smaller bunker fuel tank. It is supervised from the

Abadan office. Only a few men are stationed there to take care of maintenance.

Bandar Mashur

Bandar Mashur is located on the Khor Musa about 40 miles from the Persian Gulf and 60 miles by air from Abadan.

One 12" line and one 22" line about 42 miles long carries crude from the Agha Jari field to the Mashur tank farm. Two small products lines 4" and 3" for light products, and one 12" line for bunker fuel connect Mashur with the Abadan refinery.

Crude oil storage space, now full of oil, consist of 12 tanks of 134,000 barrels each. Ten others of the same size are under construction. There are also two bunker fuel tanks, of 134,000 barrels each, and a small fuel oil tank of about 17,000 barrels, which are located at the jetty head.

[12205] Oil loading facilities consist of 4 jetties, 1 complete and ready for service; 2 others can be put into operation in 30 days and construction on a fourth is well started. It is also possible to load ships at 2 buoys already constructed.

Two pump houses, one having two pumps electrically-driven and the other three pumps diesel-driven, can load vessels at the rate of 6,000-7,500 barrels per hour.

At the jetties the water is 38 feet deep at low tide and 48 feet at high tide. The water in the channel to the sea has a greater depth and the port can handle the largest tanker built today.

At present there is an office building and good living quarters for staff and labor. Several buildings are under construction.

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There is apparently enough material on hand to complete all construction of storage tanks and buildings. There is the need for two or three large tugs to maneuver tankers. There are two small steam tugs and several launches on hand.

The present personnel of staff and labor consists of about 400 men in the marine and 80 men in the loading facilities.

COMMENTS

1. Unquestionably, the most urgent shipping need is to comply with the request of the Marine Superintendent for a Marine and Terminal expert with one or two assistants to make a detailed survey of the shipping and loading facilities. This should be done before any extensive tanker program is planned, either for Abadan or Mashur.

[12206] 2. It is probably a safe estimate that within three weeks Bandar Mashur could load at least two T-2 tankers a day or about 260,000 barrels of Agha Jari crude, or perhaps one super tanker (28,000-38,000 tons) at 200,000-240,000 barrels per day and thereafter gradually increase its facilities.

3. At Abadan, with thirty days' notice, probably as many as three to four 12,000 ton tankers of about 85,000 barrels each could be cleared in one day and thereafter gradually increase facilities to normal.

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[12207] GENERAL SUMMARY

W. Alton Jones

Upon Iran's nationalization of the petroleum industry and the cessation of petroleum shipments from the country early in 1951, there was an immediate and serious impact upon the availability of petroleum products to consumers worldwide. The effect of this shutdown, as is now apparent, was twofold: (1) the almost instantaneous expansion of crude production from other Middle East countries, such as Iraq, Bahrein, Kuwait and Saudi Arabia as well as from Western Hemisphere countries; and, (2) the immediate utilization of all European refining facilities, old and new, the substantial expansion of refining facilities in Venezuela and the United States, and the prompt adoption of plans by Anglo-Iranian and other interests to construct refining facilities with substantial capacity in other parts of the world. The measures taken to date make it self-evident not only that the loss in crude production through cessation of activities in Iran has been overcome, but also that if the total loss of the Abadan refining capacity has not already been made up, it soon will be.

As of the present day, and although no Iranian-produced petroleum is being utilized outside of Iran, the free world demand for petroleum products is being adequately met and the indications are that such demands can continue to be met for the immediate future without Iranian oil production. On the other hand, even from a short range standpoint, it is an economic and sociological tragedy that the petroleum facilities of Iran should be substan- [12208]

tially idle, particularly since the economy of Iran could benefit greatly from a realistic exploitation of her petroleum resources. Furthermore, from a longer range viewpoint the ever-increasing demand for petroleum products on the part of the free world will eventually need Iranian oil to satisfy such requirements.

It is, therefore, the purpose of this section of the report to discuss the problems involved in securing the earliest possible reactivation of Iran's petroleum industry.

There are three major considerations to be resolved if the petroleum industry in Iran is to be reactivated:

First, obtaining sufficient tankers, markets and marketing facilities to secure outlets for Iranian petroleum products and crude oil.

Second, obtaining necessary skilled petroleum technologists and operators to supplement the present Iranian staff for the operation of the petroleum facilities.

Third, obtaining the necessary replacement and repair material to permit the operation of the existing petroleum equipment, a large proportion of which is of British manufacture.

It is proposed to discuss the first consideration in some detail in this summary section since it is the most difficult of solution. The second and third considerations have already been discussed in the detailed sections of this report dealing with refining, oil production, and transportation, and will be summarized in this section.

In order to appreciate the problem of obtaining sufficient transportation and marketing facilities to assure outlets for Iranian petroleum products it is necessary to consider the

worldwide flow of petroleum and [12209] petroleum products from production centers to marketing areas.

For the year 1952 it is estimated that the consumption of petroleum products worldwide, excluding Russian-dominated areas, will average about 11,500,000 barrels per day. Of this amount, about 8,500,000 barrels will be consumed in the Western Hemisphere (the United States alone will consume 7,000,000 barrels per day), and the Eastern Hemisphere will consume an average of about 3,000,000 barrels per day. The Western Hemisphere, considered as a unit for 1952, is more than self-sufficient as far as its ability to satisfy its own demand is concerned. In fact, during 1952 it is probable that the export of petroleum from the Western Hemisphere to the Eastern Hemisphere will average over 200,000 barrels per day.

As indicated in Table I in the appendix, the amount of petroleum exported from the Western Hemisphere has been decreasing over the years due to the fact that in this area the growth of new production has not kept pace with its growth in demand. It is also quite probably true that the time will come when a portion of the demand for petroleum in the Western Hemisphere will be met by importations from the Eastern Hemisphere but it is unlikely that such a movement in any significant quantity will occur within the next five years. During recent years some small quantities of Middle East crude have been imported into the United States for processing but such movements in total have not yet exceeded 100,000 barrels per day, and have been undertaken by U. S. companies who were desirous of utilizing some of their Middle East crude production capacity to supplement their individual needs for petroleum products. The

economic movement of Middle East crude oil to the United States in any substantial quantity is hampered by two factors:

First, the high cost of transporting this oil. Under today's conditions utilizing T-2 tankers the transportation, canal tolls, and import duty [12210] costs of laying Middle East crude down on the Eastern Seaboard of the United States will be $1.70 per barrel. This should be contrasted with a similar cost of laying Venezuela crude down on the Eastern Seaboard of the United States of $.50 per barrel. It is apparent that until there is a real shortage of crude oil in the Western Hemisphere to meet the Western Hemisphere's demands for petroleum products it is improbable that there will be any substantial movement of Middle East crude to the United States unless it is possible by reason of low production costs to offer such crude at a price sufficiently attractive to create a demand.

Second, Middle East crude coming to the United States would likely be processed at refineries on the Eastern Seaboard. Processing at inland or Gulf Coast refineries would require expensive uneconomic back hauls of products. At the present time the total refining capacity of East Coast refineries in the United States amounts to 2,000,000 barrels per day, of which 80% is owned by U. S. oil companies who have their own domestic production as well as substantial production in the Caribbean area and in the Middle East. It is unlikely that such companies would be interested in processing Iranian crude.

On the other hand, there are some American companies which presently do not have sufficient crude reserves, either

domestic or foreign, to meet their crude oil requirements. In the event Iranian crude were so priced as to compete advantageously on a delivered basis with other crudes, it is possible that under proper conditions a market for a limited amount could be found among these companies.

During the last full year of operations in Iran prior to nationalization, about 80% of the crude oil produced in that country was processed at the Abadan refinery and exported as products. The petroleum industry in Iran at [12211] that time, as well as at present, employed about 55,000 Iranians, of which almost 50% (27,000) were employed at the Abadan refinery. It would appear that the restoration of the Iranian economy will require the continued operation of the Abadan refinery and, consequently, the export problem is primarily one of exporting petroleum products rather than crude oil. The possibility of exporting any substantial quantity of petroleum products from Iran to the Western Hemisphere in the foreseeable future would appear to be almost negligible. This is particularly true because the Abadan refinery in contradistinction to Iranian oil production is not a low-cost producer. The labor costs at the Abadan refinery, despite comparatively low wage rates, are from five to seven times greater than for comparable U. S. refineries, and the yield of high value products, such as gasoline, is much lower than invariably obtained by U. S. refineries. It would seem to be completely unrealistic to assume that any reactivation of the Iranian refining industry could be achieved in the foreseeable future through the exportation of refined products from Abadan to the Western Hemisphere.

Since it does not appear that the exportation of either crude oil or refined products from Iran to the Western Hemi-

sphere offers any real hope of substantially reactivating the Iranian petroleum industry, it is obvious that such reactivation will depend upon regaining those markets in the Eastern Hemisphere which were served from Iran prior to nationalization. It is apparent that European, African and Asiatic markets are more logically the outlets for Iranian petroleum products than are those of the Western Hemisphere. Furthermore, the demand for petroleum products is growing much more rapidly in the countries of the Eastern Hemisphere than in the United States. The consumption of petroleum products since World War II in the Eastern Hemisphere has increased about 87% from 1946 through 1951, an annual increase of almost 14%, while in [12212] the same period the annual increase in the United States has been about 8%.

It would seem, therefore, that as far as markets are concerned, the reactivation of the Iranian petroleum industry should be based upon the reentry of Iranian petroleum into Eastern Hemisphere markets as was the situation prior to nationalization.

A correlary part of securing outlets for Iranian petroleum is the problem of securing sufficient tankers for the movement of this oil. It is estimated that to move as much oil from Iran as was moved in 1950 to Eastern Hemisphere markets would require about 400 tankers, aggregating about 5,000,000 deadweight tons. Table II in the appendix shows the latest available listing of the worldwide tankage fleet by countries and by tonnage. As of the present time practically all these tankers are in operation and it is probable that this tight tanker situation will continue for the next two years. While it is true that a certain number of

tankers can almost always be obtained on a charter basis, it is highly improbable that anything like 5,000,000 tons of tanker capacity could be obtained to move Iranian petroleum without drawing on at least part of the fleet which, prior to nationalization, moved Iranian oil into world markets. The construction of a new-fleet of tankers for this purpose is possible, but it would be exceedingly expensive (possibly $800,000,000) and would require as much as five years to complete.

Summarizing, the following reflects the views of Mr. Jones and his associates on this phase of the report:

1. Complete reactivation of the Iranian petroleum industry in any reasonably short time will require that some arrangement be consummated through which a substantial portion of the marketing and transportation facilities utilized for Iranian oil prior to nationalization will be restored to this service.

[12213] 2. There will be little, if any, demand in the Western Hemisphere for refined products from Abadan.

3. For the immediate foreseeable future, Abadan refinery operations cannot be increased beyond the amount needed to take care of internal Iranian demands and such markets as can be developed in Europe, Asia and Africa.

4. Because of prospective substantial increases in demand in those markets, it should be possible over a considerable period of time to build up Iranian exports of products to a respectable figure. This is not a short range project, however, and must be undertaken on a gradual basis.

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5. Even from a relatively short range point of view, Iranian crude in some quantities could probably find its way into American markets, assuming the following conditions:

(a) Crude to be so priced in Iran as to reflect an advantage on a delivered basis over other crudes available on the Eastern Seaboard of the United States.

(b) Willingness of Iran to enter into long term supply contracts with sufficient flexibility to maintain this relationship with competing crudes.

(c) Development of some method, possibly through agreement between United States and British Governments, that would allow Iranian crude to move to U. S. markets without tie-ups, law suits and other similar harassments to the purchasers of the crude.

[12214] Even though it is believed that under the above conditions some Iranian crude could move to the United States, it should be appreciated that for reasons already outlined such movements in the short term future would not exceed twenty percent of the crude oil productive capacity of Iran and only then under extremely favorable economic conditions. However, such an arrangement, if it were consumated, could rather quickly supply a substantial increase in revenues to the Iranian government.

The second major problem in regard to the reactivation of the Iranian petroleum industry lies in obtaining necessary skilled petroleum technologists and operators to supplement the present Iranian staff. It is recognized that as an inherent part of the oil nationalization program a policy has

been established whereby the management of the Iranian oil industry will be administered by Iranian nationals. It is believed that this policy can be adhered to and full and efficient operation of the oil installations obtained, provided that two essentials are fulfilled:

First—An inherent danger in any state-operated industrial enterprise is that business judgment and administrative decisions become subordinated to political expediencies. In the highly competitive and technical petroleum industry it is essential, if Iran is to take its place in the world petroleum picture, that its petroleum industry be freed from the influence of political pressures.

Second—In such contacts as Mr. Jones and his party have had with the Iranian nationals administering Iran's oil industry, they have been uniformly impressed with the ability, character and personality of these staff members. While it is true that most of the present staff members have not had extensive experience in handling those problems for which they are presently responsible, and while it is also true that this staff is limited in number [12215] especially if it were called upon to administer the Iranian petroleum industry at capacity, nevertheless it is believed that if it were supplemented by properly qualified advisors and a limited number of skilled technicians and operators it would be possible to operate the Iranian petroleum industry at capacity and comply completely with the policy of Iranian management.

In prior portions of this report detailed reference has been made to the members and qualifications of outside assistants who should be provided for each of the operating divisions to maintain satisfactory operations at various lev-

els of capacity. In general, it is believed that about six specialists, particularly lubricating oil manufacturing specialists, are needed at the present level of refining operations (23,000 barrels per day). For an operating level of 200,000 barrels per day, it is believed that outside specialists, numbering 200, will be required, with probably about 400 such specialists required for all-out operations. In most cases these specialists would serve as advisors to Iranian staff members, although a certain number of actual operators will be required for such highly specialized equipment as the catalytic cracking unit at Abadan. In order that this type of technical and management assistance may function properly, it is evident that such assistants must be highly qualified and experienced in modern petroleum technology and operations.

It would be extremely difficult, if not impossible, for the National Iranian Oil Company to employ the number of qualified petroleum technologists and administrators needed to reactivate their industry. Such qualified individuals are almost certainly already employed in the U. S. domestic industry and would be generally unwilling to completely divorce themselves from their present association. It is difficult to see how such specialists could be made available to Iran other than by collaboration with some U. S. oil company where [12216] a scheme of rotation for foreign service could be instituted.

A correlary part of this same problem lies in the necessity of the Iranian petroleum industry, if reactivated, maintaining close relationship with a well-qualified, technical, petroleum organization to assure the Iranian industry being kept informed on the technological developments of the industry. Historically, the petroleum industry has made continuous technological progress, and any segment of the

industry—worldwide—which does not keep abreast of such developments finds itself in an uneconomic position eventually. Therefore, a reactivated Iran petroleum industry will need intimate contact, from a technological standpoint, with some progressive petroleum organization if it is to maintain or expand its position in the world petroleum situation.

The third major problem facing the reactivation of the Iranian petroleum industry is that of obtaining the necessary repair and replacement material to permit the operation of the existing petroleum equipment, a large proportion of which is of British manufacture. The combination of British equipment in American-designed facilities is quite general in the petroleum facilities in Iran and is the result of a definite British policy to reduce the dollar drain created by expansion requirements.

The very general use of British-manufactured pumps, air compressors, automotive equipment, power generating facilities, etc. has created and will continue to create a serious spare parts problem for the oil facilities in Iran. It is theoretically possible to replace all such British-manufactured equipment with American fabricated material but such a wholesale replacement would be exceedingly expensive (possibly forty million dollars) and, in addition, would require several years to complete.

It appears that any plan for the prompt reactivation of the Iranian petroleum facilities at anywhere near capacity must include some arrangement [12217] whereby the necessary repair and replacement materials for the British-manufactured equipment can be obtained from the British manufacturer.

At the present level of operations the spare parts problem is, of course, less acute and can, to a large degree, be overcome by cannibalizing equipment not needed for opera-

tional purposes. Even at this level certain problems have arisen, particularly in regard to spare parts for the lubricating oil plant at Abadan, for the electric power and steam generating equipment at Abadan and at Masjid-el-Sulamein, and for the automotive equipment in general. It is probable that such problems could be overcome provided that enough dollars are available to the Iranians for the purchase of American fabricated equipment as replacements and provided that American technical help is provided for the selection of the necessary items.

[12218] RECOMMENDATIONS

W. Alton Jones

It is recognized that the presenting of specific recommendations looking toward the reactivation of the Iranian petroleum industry is fraught with many difficulties and dangers of being misconstrued. However, the present impasse appears to be so hazardous, not only to the economy of Iran, but also to the ultimate well-being of the free world that this report should not close without presenting such recommendations as have developed from the study and analysis given to the Iranian oil situation over the past several months. Therefore, the following specific recommendations are offered with the belief that their adoption would ameliorate, if not lift entirely, the burdens now being borne by the Iranian people and the struggle to strengthen the security of the free world.

1. This fact must be recognized by all parties concerned; that the full reactivation of the Iranian oil industry within a period of five years or less can only be obtained by the consummation of some agreement

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between the Iranians and the British whereby the markets and the transportation and marketing facilities previously being served by and handling Iranian petroleum are returned to that service. Therefore, the development of a mutually satisfactory agreement between the Iranians and the British is the fundamental point governing the full reactivation of the oil industry of Iran.

[12219] Such an agreement should be based on the following conditions, most of which have already been accepted in principle by the parties concerned.

(a) The British to recognize the right of Iran to nationalize the petroleum industry in Iran.

(b) The Iranians to agree to compensate the British in a fair and equitable manner for the value of the petroleum facilities taken over by the Iranians.

(c) All outstanding claims between the Iranians and the British to be equitably adjusted and payment arranged.

(d) The British to agree to purchase at specified prices and volumes Iranium-produced petroleum products.

(e) All economic and political sanctions and restrictions to be removed by both parties.

It is believed that if there is a sincere desire on the part of both the Iranians and the British to settle the controversy within the framework of the above principles, such a settlement could be achieved that would be satisfactory to both parties.

Therefore, it is recommended that two small groups of representatives (three of each) to be appointed by

Summons and Complaint, June 11, 1956

[11011] IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

COMPLAINT

The Plaintiff, by his attorneys, brings this action against the defendants and upon information and belief complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This claim is made under the provisions of Section 4 of the Clayton Act, 15 U. S. C. § 15, for damages to compensate for injuries suffered by plaintiff in his business and property by reason of the commission by defendants of acts forbidden by Sections 1 and 2 of the Sherman Act, as amended and Section 73 of the Wilson Tariff Act, 15 U. S. C. §§ 1, 2, 8. The jurisdiction of this Court is invoked under the aforesaid sections of the Sherman Act and Wilson Tariff Act and the Act of [11012] June 25, 1948, 28 U. S. C. § 1337.

2. Each of the defendants transacts business within the Southern District of New York and may be found there.

3. Plaintiff, Gerald B. Waldron, is a citizen of the State of Colorado and does business as Consolidated Brokerage. During the periods, hereinafter more fully described,

plaintiff was engaged as an oil broker seeking to effect sales of Iranian oil in the United States and elsewhere.

II.

Description of Defendants

4. The following corporations are made defendants herein:

Name and Address	Places of Incorporation	Principal Places of Business	Abbreviated Name
British Petroleum Company, Ltd. (formerly Anglo-Iranian Oil Company, Ltd.) 610 Fifth Avenue New York, New York	registered in United Kingdom	London, England	Anglo Iranian
Cities Service Company 60 Wall Street New York, New York	Delaware	New York, New York	Cities Service
Gulf Oil Corporation 600 Fifth Avenue New York, New York	Pennsylvania	Pittsburgh, Pennsylvania	Gulf
Socony Mobil Oil Company, Inc. 26 Broadway New York, New York	New York	New York, New York	Socony
Standard Oil Company of California 30 Rockefeller Plaza New York, New York	Delaware	San Francisco, California	Socal
[11013] Standard Oil Company (New Jersey) 30 Rockefeller Plaza New York, New York	New Jersey	New York, New York	Jersey
The Texas Company 135 East 42nd Street New York, New York	Delaware	New York, New York	Texas

Each of the defendants is a fully integrated enterprise carrying on, by its own acts or through numerous subsidiaries and affiliates in many parts of the world, exploration, production, transportation, shipment, refining, marketing, research and manufacturing operations with respect to petroleum or products thereof.

5. The acts and thing herein alleged to have been done by the defendants were authorized, ordered or done by officers, agents or employees thereof.

III.

The Commerce Involved

6. The trade and commerce involved herein is in petroleum and products thereof, and the words "petroleum and products" shall be deemed to mean crude oil and the principal products refined therefrom, including gasoline, fuel oils, lubricating oils, gas oils, diesel oils, white oils, and kerosene. Each of the defendants is engaged in the business of producing, refining, transporting, and/or marketing of petroleum and products. In the course of said business, the defendants, sometimes by subsidiary or affiliated corporations, have and/or continue regularly to put vast quantities of said petroleum and products in commerce among the several States of the United States, and/or from the United States [11014] to foreign countries, and/or from countries to the United States, in interstate and foreign commerce of the United States. The value of said petroleum and products amounts to many millons of dollars each year.

7. The defendants, including their subsidiary and affiliated corporations, and other companies hereinafter described, control a substantial majority of the world's estimated crude oil reserves. They account for virtually all of the production of crude oil in the Eastern Hemisphere (excluding Russia and countries under the domination or control of Russia). They also control a substantial majority of the refining capacity of the free world and virtually all pipelines outside the United States. Furthermore, they control approximately two-thirds of the world's privately owned tanker fleet. They account for a major part of the petroleum and products marketed in most countries of the free world.

IV.

THE CONSPIRACY

8. Beginning in or about the year 1928, and continuing up to and including the date of filing this complaint, the defendants and other companies and persons have been and now are engaged in an unlawful combination and conspiracy to restrain interstate and foreign commerce of the United States in petroleum and products, to increase domestic market prices of petroleum and products imported into the United States, and to monopolize [11015] trade and commerce in petroleum and products between the United States and foreign nations, and said defendants and other companies and persons during said period of time have been and now are unlawfully monopolizing trade and commerce in petroleum and products between the United States and foreign nations, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monop-

olies," as amended (15 U. S. C., Sections 1 and 2), commonly known as the Sherman Act, and Section 73 of the Act of Congress of August 27, 1894, as amended, entitled "An act to Reduce Taxation, to Provide Revenue for the Government, and for Other Purposes" (15 U. S. C., Section 8), commonly know as the Wilson Tariff Act.

9. The aforesaid combination and conspiracy and monopolization have consisted of a continuing agreement and concert of action among the defendants and other companies and persons, the substantial terms of which have been that they agree to and do:

(a) Secure, maintain and exercise control of foreign production and supplies of petroleum and products;

(b) Divide among themselves foreign producing and marketing territories;

(c) Agree upon, maintain and correlate domestic and world prices of petroleum and products;

(d) Control imports of petroleum and [11016] products into the United States;

(e) Control exports of petroleum and products from the United States;

(f) Exclude United States companies and persons other than defendants and their subsidiaries and affiliated companies, from opportunity to engage outside the United States in the production and refining of petroleum and products, and from importing into the United States foreign petroleum and products of their own production or manufacture;

(g) Exclude United States companies and persons other than defendants and their subsidiaries and affili-

ated companies, from opportunity to import into the United States petroleum and products produced in foreign countries by defendants and other companies;

(h) Enter into long term supply contracts to prevent sales of foreign produced petroleum and products to competitors;

(i) Eliminate or restrict competition in foreign markets;

(j) Cause the formation of local cartel agreements to suppress and eliminate competition in various foreign markets and areas;

(k) Control a predominant part of the world's commercial tanker fleet and exclude others from the opportunity of utilizing tankers for the transportation of petroleum and products in foreign trade;

[11017] (l) Acquire the business and facilities of other companies engaged in the production, transportation, refining and/or marketing of petroleum and products outside the United States; and

(m) Submit uniform non-competitive bids for supply of petroleum and products required by military and civilian agencies of the Government of the United States.

All of the facts set forth in the foregoing paragraphs 8 and 9 have been alleged by the United States of America in a complaint filed against defendants Jersey, Socony, Socal, Texas and Gulf on April 21, 1953, in the United States District Court for the District of Columbia and now, by transfer, pending in the United States District Court for the Southern District of New York.

10. In formulating and effectuating said unlawful combination and conspiracy and said unlawful monopolization, defendants have entered into various contracts, agreements, understandings and arrangements among themselves and with other companies and persons, and have done various things and have performed various acts, the principal ones which occurred on or before the filing of the complaint of the United States on April 21, 1953, other than specific acts directed toward this plaintiff, being set out more fully in the Government's complaint to which reference is hereinafter made.

(a) During late 1927 and early 1928, defendant Jersey, Royal Dutch Petroleum Company, [11018] hereinafter called "Royal Dutch", The Shell Transport and Trading Company, hereinafter called "Shell", and defendant Anglo-Iranian, held a series of conferences and meetings which resulted in an agreement known as the "Achnacarry Agreement," or "As Is Agreement of 1928" and bearing the simple title "Pool Association" and dated September 17, 1928. This agreement recites the governing principles and understandings adopted for the purpose of eliminating competition among the parties, their subsidiaries and affiliates and stabilizing world markets in petroleum and petroleum products by having the parties and all competitors they met adopt market quotas, fix prices, curtail production and limit facilities. The agreement purported not to apply to the domestic market in the United States, but directly involved exports from the United States. It also contained provisions for inclusion of additional participants.

(b) On or about July 31, 1928, Near East Development Corporation, hereinafter called "Near East", then

partly owned by defendants Jersey, Socony and Gulf entered into an agreement with Royal Dutch, Shell, Anglo-Iranian, Compagnie Francaise Des Petroles, Participations and Investments Limited, and Turkish Petroleum Company, for the joint exploration and production of certain petroleum concessions in Iraq held [11019] by the Turkish Petroleum Company. This agreement provided that the parties refrain from individually obtaining concessions for, and from producing oil in, the so-called "Red Line" area, which is that part of the Middle East bounded by the Mediterranean Sea, Red Sea, Indian Ocean, Persian Gulf, Western borders of Persia and the Black Sea. The agreement conceded to Turkish Petroleum Company the sole right to seek or obtain oil concessions in said area. At the time said agreement was executed, Anglo-Iranian held the exclusive concession for Persia which constituted the remainder of the Middle East, and the Capital stock of Near East was owned by defendants Jersey, Gulf, and Socony, and by The Atlantic Refining Company, Standard Oil Company (Indiana), and Pan American Petroleum and Transport Company. Subsequently defendants Jersey and Socony purchased all the capital stock of Near East.

(c) In further implementation of the As Is Agreement, defendants Jersey and Anglo-Iranian, and Royal Dutch and Shell entered into a series of agreements embodied in "Memoranda for European Markets", dated January 20, 1930, providing the parties should control production and marketing in European countries through local agreements, to be made in each area by local cartel committees empowered to fix [11020] marketing quotas

on a basis of 1928 performance, fix prices, allocate major customers, and penalize variations thereform.

(d) During the year 1931, defendants Jersey and Anglo-Iranian, and Royal Dutch and Shell negotiated with defendants Gulf, Socony, Texas, and others more closely and directly to participate in the As Is programs on the basis of quotas reflecting sales positions in 1928. Defendants Gulf, Socony, and Texas, and others thereupon organized the "New York As Is Committee" to work out their respective participating sales positions.

(e) After a series of meetings in October, November and December, 1932, defendants Jersey, Gulf, Socony, Texas and Anglo-Iranian, and Royal Dutch, Shell and Atlantic Refining Company on December 15 and 16, 1932, entered into a new agreement entitled "Heads of Agreement for Distribution", revising the framework for operations under the As Is Agreement and extending the "Memorandum for European Markets" to all countries other than United States. The parties stipulated that the "Central As Is Committee" operate in London as a distribution agency while the New York committee handle "Supply As Is", i.e., all matters relating to gathering [11021] and shipping petroleum and products to areas for use and distribution under As Is quotas. Defendant Socal during 1933 commenced direct participation in this part of the conspiracy for certain restricted areas.

(f) In April, May and June 1934, the parties to the principal As Is Agreement and implementing agreements, including all of the defendants, *except Cities Service*, entered into a codifying agreement entitled

"Draft Memorandum of Principles", commonly called "DMOP", and a number of "Addenda" thereto, by which the allocations of quotas based on the year 1928 and determination of prices by majority rule were reaffirmed. The DMOP and addenda contained new conditions for sales of petroleum and petroleum products to competitors, regulated competitive expenditures for facilities and advertising, regulated supply and set up formulae for arriving at quotas, determining penalties and compensations for over-trading and under-trading and costs and expenses on adjustments of supply. This agreement was to be of indefinite duration and terminable on one month's notice but it was stipulated that such termination should not prevent the parties from attempting to continue to operate under As Is principles.

(g) Defendant Gulf, acting independently of the other defendants, was successful in obtaining [11022] a concession for the production of oil in Kuwait, but later was forced to take in defendant Anglo-Iranian as a partner. In 1935, oil was discovered and Gulf found it difficult to market its share of production because Gulf had agreed not to upset Anglo-Iranian's position "at any time or place" and had to recommit itself to cartel operations in Europe. On May 28, 1948, defendant Gulf entered into a 12-year contract with Royal Dutch and Shell to sell to the latter Gulf's share of crude oil produced in Kuwait. This transaction prevented Gulf from disturbing Royal Dutch, Shell and Anglo-Iranian markets in which Gulf had not become an established marketer. Shell was also able to meet its commitments in Europe and Africa and preserve its As Is position and, in addition, to supply Anglo-Iranian with oil which it needed.

(h) Throughout the period from 1928 to the present time, defendants and other companies and persons entered into and have effectuated and adhered to a series of price-fixing agreements for determining and establishing "delivered prices" at any given destination point throughout the world, including the United States, for petroleum and products produced or refined in foreign countries, and produced or refined in the United States and exported therefrom, regardless of the actual place of origin or actual cost of transportation to such destination point. Said [11023] agreements have adopted the "U. S. Gulf Coast price" as the base upon which all of said delivered prices are calculated. Various of the agreements specify that the U. S. Gulf Coast prices are those which appear for crude oil and refined petroleum products in Platt's Oilgram, published daily in Cleveland, Ohio, and that said prices are to be added an amount representing a charge for freight and insurance from the Gulf of Mexico to the destination point, regardless of the actual point of origin or actual cost of transportation.

(i) Anglo-Iranian had, prior to May 1, 1951, a contract with the Government of Iran which contract provided for the exploitation of certain oil resources in Iran. This contract had been terminated on May 1, 1951, by an Act of the Iranian Parliament, duly signed by His Majesty The Shah of Iran. By this Act the Government of Iran nationalized all of the oil resources and installations related thereto within her borders. The Act further provided that twenty-five per cent of the purchase price of future sales of said oil should be set aside as a fund to compensate Anglo-Iranian for

such of its properties as had been nationalized. Following the aforesaid nationalization, the defendants and other companies and persons, in furtherance and effectuation of the aforesaid combination and [11024] conspiracy and monopolization, determined and agreed that no one of them or any other person or persons should deal in Iranian petroleum and products until such time as they could effect a resolution that would substantially preserve to them the allocation of resources, production, production facilities and capital investments determined by the aforesaid agreements. In furtherance of said conspiracy various things were done and various acts performed, the principal ones now known to the plaintiff being the following:

(1) Beginning on September 14, 1951, Anglo-Iranian caused to be published numerous threats against anyone who might participate directly or indirectly in transactions affecting Iranian petroleum and products. Said published threats were continually uttered in leading newspapers throughout the world's financial circles until August 6, 1952. The purpose and effect of such announcements, among others, were to inform all other companies and persons involved in said combination and conspiracy that they should assist in every manner possible in preventing others from dealing in any manner with Iranian petroleum and products.

(2) On May 25, 1952, plaintiff obtained from the National Iranian Oil Company, an instrumentality of the [11025] Government of Iran, an exclusive five year contract for the sale of Iranian petroleum and products in the United States, said contract call-

ing for the sale of 15 million metric tons of crude oil at prices substantially below the defendants' posted Internataional Gulf of Persia price, to wit: $4.14 per ton below the then posted price of $12.89 per ton for the first 3 million tons and $2 per ton below the posted price for the remaining 12 million tons. When these facts became known to the defendants, Anglo-Iranian through its New York attorneys caused to be sent to plaintiff and others on August 1, 1952, letters threatening action against them for any purchase, acquisition or disposal (or any action in aid of such purchase, acquisition or disposal) of Iranian petroleum and products, asserting that any such dealing in Iranian petroleum and products would be contrary to international law. In making this threat Anglo-Iranian well knew or had reason to know, that it was unwarrantedly asserting claims to natural resources belonging to the sovereign State of Iran, when it had, in fact under established principles of international law only a claim for compensation against the State of Iran for the properties nationalized. By thus in effect labelling [11026] Iranian petroleum and products stolen property and threatening to take action against anyone who might seek to deal in such goods, Anglo-Iranian put the world on notice that it would oppose and block any attempts to produce, transport, finance or market Iranian petroleum and products anywhere in the world. Anglo-Iranian sought and, with the aid of the other defendants and others, achieved an effective boycott of Iranian oil. The defendants' purpose was so to weaken the Iranian economy as to force the Iranian Government to return its oil concessions,

if not to Anglo-Iranian in whole, at least to the defendants jointly, excepting Cities Service, under such terms as would preserve the essential allocations previously agreed upon and described hereinabove.

(3) In furtherance of their boycott of Iranian oil and maintenance of their fixed posted International Gulf of Persia price the defendants caused the knowledge to be disseminated among tanker operators that any tanker operators participating in the delivery of Iranian oil would be forever blacklisted from transporting petroleum and products owned by defendants and further that defendants would seek to make it impossible for such tanker operators to secure bunker space for their tankers in the course of the movement of Iranian petroleum and products or, for that matter, for tankers operated by them [11027] which might be used for other purposes.

(4) In aid of their common conspiracy with Anglo-Iranian the defendants Jersey, Texas, Socal, Gulf and Socony refused to purchase Iranian oil from plaintiff notwithstanding that plaintiff offered substantial quantities of petroleum and products at prices far below the posted prices and notwithstanding that petroleum and products were critically short throughout the world at this time not only because of the withdrawal of the Iranian oil but also because of numerous other factors including normally increasing consumption and the extraordinary military demand occasioned by the Korean conflict. Defendants further reinforced their boycott of Iranian

petroleum and products in pursuance of their monopoly and conspiracy in restraint of trade by indicating that they would not look with favor upon any of their subsidiaries, agents or purchasers who dealt either directly or indirectly in Iranian petroleum and that if they purchased this petroleum, they would in the future be barred from purchasing petroleum and products owned or controlled by defendants.

(5) Defendants or some of them caused normal and customary financial services necessary to the transaction of international business to be denied to plaintiff. The Chase Manhattan Bank, then the Chase National Bank, refused plaintiff a $200,000 irrevocable letter [11028] of credit, notwithstanding the fact that plaintiff met all of the conditions originally proposed. Similarly, plaintiff was refused the same routine financial service by the Marine Midland Trust Company of New York, notwithstanding the fact that he offered to comply with whatever conditions the Bank reasonably requested.

(6) Prior to 1952 Cities Service had been unable to obtain a source of crude oil in the Middle East because of the aforementioned allocation agreements. Cities Service indicated to plaintiff a great interest in purchasing his entire supply and obtaining a managerial contract for all Iranian oil exploitation and production from the Iranian Government. It was contemplated that in return for its services Cities Service would receive payment in oil, thus assuring it a crucially needed source of supply. Cities Service asked if plaintiff would be able to obtain an invitation from the Iranian Government to itself re-

questing that Cities Service inspect the Iranian oil installations for the purpose of determining whether they could be profitably reactivated. On July 26, 1952, plaintiff in audience with Dr. Mossadegh obtained the Prime Minister's written invitation addressed to W. Alton Jones, President of Cities Service. Jones accepted the invitation and on or [11029] about August 16, 1952, together with plaintiff and numerous technical assistants from Cities Service left for Iran. There, after a full inspection, Jones determined that the installations could be reactivated. He proposed to the National Iranian Oil Company that over a course of years Cities Service would exploit and manage the Iranian oil resources while undertaking to train Iranian technicians in the United States and building a tanker fleet for the Iranian Government so that ultimately the Iranians could exploit and manage for themselves their valuable oil resources. Learning of Cities Service's intention to force itself in this manner into the Middle East oil complex, Gulf and Anglo-Iranian, during late August or early September, 1952, conspired to and did offer Cities Service and Cities Service did accept a vast long term supply of Kuwait oil at a price far below the posted International Gulf of Persia price, to wit: a 12 year contract for 90,000,000 barrels of oil at $1 per barrel, or the equivalent, approximately, of $7.40 per metric ton at a time when the posted price was approximately $12.89 per metric ton. At this time and by these acts Cities Service, without the knowledge of plaintiff, entered into combination and conspiracy with the other defendants and in furtherance of defendants' scheme broke off

[11030] further negotiations with plaintiff and the National Iranian Oil Company and refused to enter into any contract or arrangement with reference to Iranian petroleum. As a further consequence of this conspiracy Cities Service eventually gained a participation in the Consortium Agreements relating to Iranian oil hereinafter described. In conspiracy with the other defendants Cities Service concealed these facts from plaintiff. Plaintiff did not learn of this conspiracy until May 6, 1954.

(7) On or about July 12, 1952, acting through Addison Brown, doing business as Oil Merchants Company of Chicago, Illinois, a qualified government bidder, plaintiff obtained a firm order from the United States Air Force for from 126,000,000 to 210,000,000 gallons of aviation gasoline. This gasoline was then desperately needed in Korea. The price at which the gasoline was offered was substantially below the then current price which the United States Air Force was being required to pay and in addition there were substantial savings in freight since the gasoline was in Iran, more than half way to Korea as against gasoline shipped from the Gulf of Mexico. The United States Air Force accepted the gasoline FOB Abadan, Iran, delivery to be made to Korea by United States Military tankers. However, Anglo-Iranian [11031] refused to modify in any way its effective boycott of Iranian oil notwithstanding plaintiff's warranty that the gasoline would be restricted to direct sales of the United States Military forces.

(8) During 1952 and 1953 plaintiff entered into negotiations with numerous other prospective purchasers all of whom ultimately concluded that the risks of extended litigation with Anglo-Iranian and future economic sanctions by the other defendants, their subsidiaries and agents were too great for them to assume with their limited financial resources and in view of their reliance upon the defendants as future sources of supply.

(9) Finally, on October 29, 1954, Anglo-Iranian, Jersey, Socal, Texas, Gulf and Socony, with others, in furtherance and effectuation of the aforesaid combination, conspiracy and monopolization, entered into the so-called Consortium Agreements, which agreements divided up substantially all of the Iranian oil production, thereby bringing to final and complete frustration plaintiff's efforts to market Iranian oil in free competition. Shortly after the signing of the initial Consortium Agreements Cities Service was permitted to purchase a participation in the Consortium.

(j) Many of the defendants have acted through subsidiary corporations owned or controlled by them, either separately or jointly, which are not named as defendants herein in performing and [11032] carrying out the unlawful agreements and monopolization hereinbefore described, and have caused, directed and required said subsidiary corporations to conduct their respective business operations in conformity with said unlawful agreements and monopolization. In many instances the participation in ownership of the jointly owned companies

was identical with percentages of marketing quotas under the As Is agreements. Each of the joint owners has agreed not directly to engage in operations in the area covered by the jointly owned company.

V.

Effects

11. The alleged combination and conspiracy and monopolization hereinbefore charged have had, among others, the following direct effects:

(1) Interstate and foreign commerce of the United States in petroleum and products has been unreasonably restrained;

(2) Imports of petroleum and products into the United States, and exports of petroleum and products from the United States have been restrained and monopolized;

(3) Production of petroleum and development of petroleum resources in the United States have been restricted and suppressed as a result of the illegal activities of defendants relating to imports of petroleum and products into, and [11033] exports of petroleum and products from, the United States;

(4) Defendants have acquired to the exclusion of others the power to import into the United States large quantities of foreign petroleum and products, at costs substantially below the costs of petroleum and products to other competing American oil companies, and defend-

ants thereby possess substantial competitive advantage over other competing American oil companies in the manufacture and marketing in the United States of petroleum products;

(5) Defendants have been enabled successfully to maintain and increase the domestic market prices at which they sell petroleum and products imported by them into the United States, and products made by them from petroleum imported into the United States, at levels higher than would exist except for defendants' monopoly control over said imports;

(6) World prices for petroleum and products have been fixed, and world markets have been divided among the parties to the combination and conspiracy and monopolization above charged;

(7) Prices charged by defendants to agencies of the Federal Government for foreign petroleum and products required for military and defense purposes have been increased and maintained at [11034] high and artificial levels;

(8) Plaintiff was completely and utterly frustrated in selling the 15 million metric tons of Iranian oil which he had under contract from the National Iranian Oil Company, and was prevented by the conspiracy from obtaining any of the fruits or benefits of said contract. Plaintiff has suffered damage and injury in his property in the amount of $36,420,000 and is entitled under Section 4 of said Sherman Antitrust, to threefold damages in the amount of $109,260,000.

VI.

PRAYER

WHEREFORE, the Plaintiff prays:

1. That the aforesaid combination and conspiracy and monopilization be adjudged and decreed to be unlawful and in violation of Sections 1 and 2 of the Sherman Anti-Trust Act and of Section 73 of the Wilson Tariff Act.

2. That judgment be entered against defendants and each of them for $109,260,000, being the amount equal to three times the damages sustained by plaintiff, with interest thereon.

3. That judgment be entered against defendants and each of them for the amount of reasonable attorneys' fees and the costs and disbursements of this action.

4. That plaintiff be granted such other, further and different relief as the nature of the case may require [11036] and as may seem just and appropriate to this Court.

Dated: New York, New York
June 11, 1956.

CASEY, LANE & MITTENDORF

By SAMUEL M. LANE
A Partner
Attorneys for Plaintiff
43 Exchange Place
New York 5, New York

Affidavit of Arthur H. Dean, June 27, 1956

[12154] UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

ARTHUR H. DEAN, being duly sworn, deposes and says:

I am an attorney at law, a member of the Bar of this Court and a member of the firm of Sullivan & Cromwell, attorneys for defendant Standard Oil Company (New Jersey) (hereinafter called Jersey), and am fully familiar with this action.

I make this affidavit in support of Jersey's motion under Rule 6(b) of the Federal Rules of Civil Procedure for an order extending time to move, answer or otherwise plead to the complaint until October 30, 1956, and for a temporary extension of time and stay of further proceedings other than depositions heretofore noticed until 20 days after entry of an order upon the motion. I am authorized by the attorneys for named defendants Cities Service Co., Standard Oil Company of California and The Texas Company to state that, on behalf of their respective clients, they join in this application.

[12155] This is a treble damage action under the United States antitrust laws in which plaintiff seeks a judgment for $109,260,000, plus costs and attorneys' fees, for alleged damage to him arising from an alleged conspiracy in violation of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act.

Affidavit of Arthur H. Dean, June 27, 1956

The action was commenced by the filing of the complaint on June 11, 1956. Copies of the summons and complaint were served or attempted to be served on each of the named defendants herein on June 12, 1956. Under Rule 12 of the Federal Rules of Civil Procedure, the time to move, answer or otherwise plead to the complaint now expires on July 2, 1956.

The only other proceedings in this action thus far have been the service, on June 27, 1956, of separate notices by defendants Standard Oil Company (New Jersey), Socony Mobil Oil Company, Inc. and The Texas Company to take the deposition of plaintiff pursuant to the Federal Rules of Civil Procedure commencing July 9, 1956.

On June 27, 1956, subsequent to the service of the above mentioned Notices of Deposition, a request was made of the attorneys for plaintiff on behalf of various of the attorneys for the named defendants for the extension of time herein sought. This request was refused, thereby making the present application necessary.

This application is sought to be brought on by order to show cause because of the shortness of time until July 2 in order to obtain temporary relief until the application may be heard and determined. No previous application for this relief has been made to this Court or to any Judge thereof.

[12156] Apart from the amount of recovery sought (in excess of 109 million dollars), the significance of this action to the defendants, the extraordinary complicated questions of fact and law presented, and also the problems of international complexity and importance necessarily involved, are indicated by reference to the complaint, a print of which is attached hereto for the convenience of the Court.

Plaintiff asserts in his complaint that he was damaged by an alleged conspiracy among the named defendants to

frustrate his efforts to sell Iranian crude oil in the United States under a purported contract which he allegedly obtained from the National Iranian Oil Company on May 25, 1952 following the nationalization in 1951 by the Iranian Government of the oil properties in that country. The allegations with respect of this purported conspiracy are set forth in subparagraphs 10(i)(1) through (9), at pages 11 through 17 of the attached print of the complaint. Apart from the factual problems involved in these paragraphs, plaintiff expressly invokes "principles of international law" in the allegations of subparagraph 10(i)(2). Mention is also made in subparagraph 10(i)(9) of an agreement entered into by various of the defendants and others with the sovereign Government of Iran in 1954. The Court will no doubt recall the international concern stemming from the nationalization of the oil properties in Iran that Iran would go behind the Iron Curtain and the Iranian oil resources lost to the free world. Efforts were thereafter made for a period of some three years by the United States Government, as well as the British Government, to effect a satisfactory resolution of the problem, including special missions by Honorable Averell Harriman and Honorable Herbert [12157] Hoover, Jr. The problem was resolved only by the signing of the above mentioned agreement with the assistance of the United States State Department, the American oil companies having been told by the Secretary of State that their participation would be "in the national interest." The resolution of the problem by this means was officially hailed by the United States Government as well as by the British and Iranian Governments. President Eisenhower (in letters to Mr. Hoover and to Ambassador to Iran Loy W. Henderson released August 7, 1964) described the agreement as promising to further "our objective of main-

taining peace in the area", and said that the solution would "also contribute to our good relations with our European allies and our friends in other parts of the world as well." These facts highlight the complex international relationships into which plaintiff seeks to thrust his claim.

In addition, however, plaintiff has attempted to introduce into his complaint an alleged conspiracy dating back to 1928, the allegations of which not only have nothing to do with his alleged contract for the sale of Iranian oil in the United States but, indeed, cover a large portion of the world. For this purpose, plaintiff has rigidly copied many of the allegations contained in a civil antitrust action filed by the United States in April 1963 against 5 of the named defendants herein, which is now at issue and pending in this Court. Alleged marketing agreements in 1928 and the early 'thirties in various foreign countries, as well as 1928 and 1935 production ventures in such areas as Iraq and Kuwait, form part of the plaintiff's allegations in this respect.

These allegations indicate the extent of the morass of alleged facts, as well as the complicated legal problems, [12158] into which plaintiff's complaint leads.

The purported contract upon which plaintiff seeks to base his case is alleged (subparagraph 10(i) (2), page 12 of print) to have been made between plaintiff on the one hand and the National Iranian Oil Company on the other during the period that Mossadegh was Prime Minister of Iran. None of the defendants is claimed to have been a party to the contract or to have participated in any way in its execution or in the circumstances surrounding its execution. Plaintiff has avoided any clear statement of the terms of his alleged contract and no part of the contract is set forth in his complaint. One of the purposes of the deposition of plaintiff which has been noticed by Standard Oil

Company (New Jersey) is to ascertain the terms of this alleged contract and all the circumstances surrounding the purported transactions.

It is my intention to move forward with this deposition as expeditiously as possible in part for the purpose of determining facts which are presently unknown to defendant Standard Oil Company (New Jersey) and which are necessary to permit defendant Standard Oil Company (New Jersey) to determine at the outset the manner in which it should defend the action. In addition, the deposition will be used to help accomplish the discovery to which defendant Standard Oil Company (New Jersey) is entitled by the Federal Rules of Civil Procedure.

In view of the character and magnitude of the factual and legal problems involved, defendant Standard Oil Company (New Jersey) requires, and I am authorized and requested to state that each of the other named defendants joining in this application requires, an extended period of time for full consideration of the motions which each may [12159] be entitled to make and the answer which each may be required to make in order appropriately to formulate the issues in this case.

These considerations involve a determination as to motions, among others, to reduce the extraordinary scope of the litigation portended by the complaint. Preparation of the answer involves not merely the question of admissions and denials, based on examination of the facts that may be available throughout the large organizations of the named defendants, but also the determination of appropriate affirmative defenses which may prove to be very significant in the action.

It is in keeping with the spirit and intent of the Federal Rules of Civil Procedure that counsel, in order to fulfill their

obligations to their clients and the Court, be given the opportunity at this crucial stage of the action to develop and consider all the factors appropriate to the task of moving or answering, and to come forward in an orderly fashion with a studied and thorough presentation of all appropriate objections and defenses to the action.

By reason of the nature of the complaint herein, such opportunity is not available within the 20-day period provided by the Federal Rules. An extension of time to move, answer and otherwise plead to the complaint is therefore not only just but necessary in order that defendants not be prejudiced and that the proceedings go forward in an orderly fashion.

Under the foregoing circumstances I respectfully submit that the present request for 120 days is appropriate to the nature of the case. In addition, of course, by [12160] virtue of the scheduled depositions, the action will continue to progress during the period of extension.

WHEREFORE, I respectfully request that the relief prayed for in the Order to Show Cause be granted in all respects.

(Sworn to by Arthur H. Dean on June 27, 1956.)

Order to Show Cause and Affidavit of George S. Leisure, June 27, 1956

[12144] IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

ORDER TO SHOW CAUSE

Upon the annexed affidavit of George S. Leisure, sworn to on June 27, 1956, and upon the complaint herein, it is

ORDERED, that the plaintiff show cause at a Motion Term of this Court to be held in Room 506, United States Court House, Foley Square, New York, N. Y., on the 3rd day of July, 1956, at 10:00 o'clock in the morning or as soon thereafter as counsel can be heard, why an order pursuant to Rule 6(b) of the Federal Rules of Civil Procedure should not be made and entered herein extending the time of defendant Socony Mobil Oil Company, Inc., to answer or otherwise move with respect to the complaint until and including October 30, 1956; and it is further

ORDERED, that pending the hearing and determination of this motion and until 20 days after the entry of an order thereon, all further proceedings other than depositions heretofore noticed be and the same are hereby stayed with respect to defendant Socony Mobil Oil Company, Inc.; and it is further

Order to Show Cause and Affidavit of George S. Leisure, June 27, 1956

[12145] ORDERED, that service of a copy of this order and the papers upon which the same is granted, on the attorneys for the plaintiff on or before 3:00 P.M. of June 29, 1956, shall be sufficient service of this order.

Dated June 28th, 1956.

RICHARD N. LEVET
U. S. D. J.

Order to Show Cause and Affidavit of George S. Leisure, June 27, 1956

[12146] IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

AFFIDAVIT

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

GEORGE S. LEISURE, being duly sworn, deposes and says:

1. I am a member of the firm of Donovan Leisure Newton & Irvine which, together with the firm of Dorr, Hand, Whittaker & Peet, are attorneys for defendant Socony Mobile Oil Company, Inc. (hereinafter called "Socony"), and I make this affidavit on behalf of both firms in support of defendant Socony's motion for an order to show cause why an order should not be made extending its time to answer or otherwise move with respect to the complaint in this action until October 30, 1956, and for a stay of further proceedings herein with respect to the defendant Socony other than depositions already noticed until 20 days after the determination of this motion and the entry of an order thereon.

2. This action was commenced on June 11, 1956. [12147] Defendant Socony was served on June 12. 1956, and at the present time Socony's time to answer or other-

wise move expires on July 2, 1956. We have been unable to secure an adequate extension of time by stipulation. This motion is made on the ground that the investigations of the law and of the facts necessary to determine what motions directed to the complaint or what answer should be made cannot be completed by July 2, 1956 or for a substantial period thereafter. Notice of the taking of plaintiff's deposition upon oral examination was served by Socony on June 27, 1956, to commence on July 9, 1956.

3. This is an action for treble damages brought under the provisions of Section 4 of the Clayton Act, 15 USC Section 15, based on alleged violations of Sections 1 and 2 of the Sherman Act, as amended, and Section 73 of the Wilson Tariff Act, 15 USC Sections 1, 2 and 8. Plaintiff claims $109,260,000 in damages.

4. The subject matter of the alleged violations of the Sherman and Wilson Tariff Acts which plaintiff claims have injured him in his business or property cover a period of some 32 years and embrace a substantial portion of the "archaeology" of the oil industry outside the United States for that period. It also covers the subject matter of very difficult and important negotiations with the Government of Iran from 1951 to 1954 to which the Government of the United States was a party. There ultimately emerged from these negotiations the "Consortium" mentioned in the Complaint in which defendant Socony participated under the auspices of the Government of the United States and after it was advised by the Secretary of State at the direction of the National Security Council that its participation in the proposed Consortium would be in the national interest

of the United States. (This is a matter of public record. See letter, Secretary of State to Chairman, House Committee on the Judiciary, July 13, 1955 set forth in *Hearings before Subcommittee No. 5 of the Committee on the Judiciary* [12148] *House of Representatives,* 84th Congress, 1st Session, Part II Ser. No. 3, pp. 1556-1559 (1955)). As a result Iranian Oil again moved in volume to world markets, and the threat of Russian penetration or occupation of Iran, with its strategically vital oil reserves was avoided. In other words, this complaint, as it stands, alleges a typical "big case," the special problems raised by which have been the subject of extended study and discussion, not only among practicing lawyers but also by a special committee of the Judicial Conference of the United States. (See Report of the Committee of the Judicial Conference, "Procedure in Antitrust and Other Protracted Cases" (1951).) But this case goes even beyond the complexities of domestic anti trust cases in that it involves international law, the rights of sovereign nations and also the diplomatic relations between the Government of Iran and the Government of the United States, Great Britain, the Netherlands and France.

5. My firm and Dorr, Hand, Whittaker & Peet, headed by Goldthwaite H. Dorr, were retained to represent Socony promptly after service of the complaint. Since that time our firms have had several of our respective partners and associates devoting as much time to the case as their numerous other commitments will permit.

6. In cases of this kind it is important at the outset to do everything possible to keep them in manageable form.

An important element for accomplishing this end is the various motions which may be directed to a complaint. We have considered a number of such motions which might be appropriate. But we are anxious to make only such motions, if any, which will serve the purpose of helping at the outset possibly to reduce the scope and complexity of this litigation. The analysis of this complaint and the related law and the consideration and preparation of motions is a time-consuming job. Rather than make such motions before a complete and careful analysis is possible, as we might be forced to do in the event our time is not extended, [12149] we would prefer to save the time of this Court by giving further study to the problems to the end that the motions, if any, which may eventually be made would serve a useful function and not consume the time of the Court and the parties unnecessarily.

7. Similarly, we need additional time to make the investigations necessary to prepare an answer. Rule 11 of the Federal Rules of Civil Procedure requires that every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name. Rule 11 further states:

> ". . . The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading . . . is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been

served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action."

It has been stated in the Federal District Court for the Eastern District of New York that:

> "The purpose of the signature of 'at least one attorney of record in his individual name' is to hold the attorney of record who signs his individual name to strict accountability." U. S. to Use of and for Benefit of *Foster Wheeler Corp.* v. *The American Surety Co.*, 25 F. Supp. 225 (1938).

8. We do not see how we can possibly be sufficiently advised as to the controlling facts in this case, which range over international transactions as well as international law, to interpose an answer that will adequately and fairly state the position of our client by July 2, 1956. Socony and its subsidiary companies throughout the world employ a substantial number of persons who might conceivably have had some contact [12150] with Plaintiff or his agents. Since the service of the Complaint a diligent effort has been made to locate persons within the Socony organizations with some knowledge of Plaintiff or of his alleged offers to Socony of Iranian Petroleum and products. As of this date I am informed that no person has been found who has any such knowledge. Nor, I am informed, does plaintiff individually or doing business as "Consolidated Brokerage" appear in any of the recognized trade directories of the petroleum industry. He is apparently not regularly engaged in the oil business. It is therefore conceivable that, if plaintiff had

any contacts with Socony, he may have used other than the usual trade channels. If such is the case it may take a substantial time to develop the facts necessary for Socony to answer his allegations.

9. We are particularly concerned with regard to Rule 8 of the Federal Rules of Civil Procedure which, in subdivisions (c) and (d) requires that all affirmative defenses be pleaded in the answer or they are waived. For example, Socony is completely unfamiliar with any contractual or other arrangements in which Plaintiff may have been interested with respect to Iranian crude oil or products and the circumstances thereof which may bear upon the interest of the plaintiff therein, or their legality, validity or enforceability, or other defenses which may exist with respect thereto.

10. We respectfully submit that in view of the approach of the summer season the requested 120 days' extension is a conservative request and if granted will in no way enlarge the length of time which will ultimately be necessary finally to dispose of this litigation.

WHEREFORE, it is respectfully requested that the relief prayed for in the order to show cause prefixed be granted in all respects, for all of which no previous application has been made.

(Sworn to by George S. Leisure on June 27, 1956.)

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

[6071] Q. What was it you learned with respect to the intentions of Cities Service concerning Iran, to which you have just referred? A. When?

Q. No, what. A. I learned that Cities Service was buying a substantial potrion of their requirements; that they wanted a source of foreign oil; that they attempted to get foreign oil in the past and were unsuccessful; that they couldn't get their foot in the door; and that they wanted to get foreign oil.

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Q. Is that all you learned? A. We learned that Cities Service Company was interested in taking over the refinery at Abadan and all of the Iranian oil installations.

Q. Did you learn or was it your view that they had formed that concept as a result of your suggestion, or was it something that had developed in the company independently of you? A. I don't know what developed in the company independently of me.

Q. Was it your impression that you generated this notion of taking over the refinery and managing the whole Iranian oil business? A. No.

Q. You discovered that to be there when you first contacted the Cities Service people? A. Not on the first contact with them.

Q. But shortly thereafter? A. Some time thereafter.

Q. Before you went to Iran on your second trip? A. I don't believe so.

[6072] Q. You think that you only discovered that notion in Cities Service after you made your second trip? A. Yes, sir.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

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Q. Your second trip occurred when: in July or August? A. I believe, Judge, I left about July 12th or 13th on the second trip.

Q. Did you write yourself a letter before you left on the second trip? A. Yes.

Q. Do you remember that you wrote in that letter that Cities Service had already formed the idea of taking over the refinery? A. Yes.

Q. Then you were mistaken when you said a minute ago that you didn't learn of that, as far as the intentions of Cities Service were concerned, until after the second trip? A. No, Judge. I mistook your question. I thought——

Q. Will you straighten yourself and me out on it? A. Yes, sir. I thought that you meant that the idea was given to Cities Service by us.

Q. Was it? A. I believe it was their suggestion.

Q. All right. I believe you now agree with me that it was before you made your second trip to Iran that you

—9507—

were aware of it? A. Yes, sir.

Q. You had fairly close relations with the Cities Service people during the time that you were in contact with them, did you not? A. Yes, sir.

Q. Indeed they were exceedingly close, weren't they? A. Yes, sir.

Q. You had access to the offices of Cities Service? A. Yes, sir.

Q. After you first established your first contact? A. Yes, sir.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. And your first contact was some time in July, was it not? A. Yes.

[6073] Q. Early in July? A. I can't give you the date.

Q. Do you have a diary of the events of that time? A. No, sir.

Q. You gave a great many dates during the examination by other counsel in this case. Were they all from memory? A. I believe so.

Q. You have a fairly vivid recollection, then, of the

—9508—

events that occurred during 1952 and 1953? A. Yes, sir.

Q. Among the people that you met at Cities Service was Mr. Lowe? A. Yes.

Q. Whom else? A. Mr. Watson, Mr. Jones, Mr. Boyd and Mr. Dubov, Mr. Larry, Mr. Shaw. That's all I recall at the moment.

Q. You had known Mr. Shaw before the middle of July of 1952, didn't you? A. Yes.

Q. You knew him from Denver, didn't you? A. Yes.

Q. Is he the only Cities Service man that you knew before the Iranian transaction developed? A. Yes, sir.

Q. These people that you mentioned: You saw some of them in New York? A. Yes, sir.

Q. And you saw some of them in Iran, later? A. Yes. I just recall—I can add some to that list if you want.

Q. I will give you a chance to do that. You saw some of

—9509—

them in Paris? A. Yes, sir.

Q. Who are the additional names that you want to mention? A. Mr. Frame, Mr. Heston, Mr. Whetsel. That's all I recall at the moment.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. Is there anybody at Cities Service that you wanted to see, that you couldn't get access to? A. When?

Q. During 1952? A. Well, after the return from our third trip, the curtain was sort of rung down on our association with Cities Service Company.

[6074] Q. Let us say until your return from your third trip. A. Yes.

Q. "Yes," meaning what? A. That we had access to them.

Q. Anybody you wanted at Cities Service? A. Well, within reason.

Q. Within reason. I mean, you never felt that there were any door slammed in your face? A. We did after the third trip.

Q. I said, before your third trip. A. No, sir.

—9510—

Q. Before your return from the third trip. A. That's right.

Q. And your relations were cordial? A. Yes.

Q. Were you reimbursed for your expenses on your second trip? A. Yes.

Q. By Cities Service? A. By Mr. Carter.

Q. By Mr. Carter. And were you reimbursed for your expenses for your third trip? A. Yes, sir.

Q. By Mr. Carter? A. Yes, sir.

Q. And then, were you compensated some time later in 1953 for your loss of time? A. Well, we were compensated at a little later date for loss of business being experienced by not being with our businesses in Denver.

Q. And also by Mr. Carter? A. Yes, sir.

Q. Did you, until the return from Iran on your third trip—which I take it was more or less approximately the

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

—9511—

same time that Mr. Jones returned from Iran, wasn't it? A. I believe I returned previous.

Q. Within a short space of time? A. Well, I don't know precisely when he returned.

Q. Let me just put it this way: Your third trip to Iran corresponded to Mr. Jones' trip to Iran? A. Yes, sir.

Q. So when you say after your return from your third [6075] trip, you could just as well say after Mr. Jones' trip to Iran? A. Well, as I say, I don't know when he returned.

Q. All right. After your return from your third trip is the period you want to fix as a change? A. Yes.

Q. Until that time, did you have any impression that Cities Service was boycotting you? A. Upon my return——

Q. No, no. Until and during the peroid prior to your return from Iran on your third expedition—— A. Yes.

Q. —did you have that impression, that Cities Service was boycotting you? A. No, sir.

Q. Or your associates? A. No, sir.

—9512—

Q. Or Iran? A. No, sir.

Q. Or Iranian Oil? A. No, sir.

Q. In your complaint, you put Cities Service in a separate category from all the other defendants, don't you?

Mr. Lane: The complaint speaks for itself, Judge.

Mr. Rifkind: I think I am entitled to an answer to that.

Q. What do you say? A. May I have the question again, Judge?

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. I say, in your complaint don't you put Cities Service in a separate category from the other defendants? A. I don't believe so.

Q. Do you put them into the conspiracy which you allege, which you say began in 1928? A. No, sir.

Q. You don't put them into this conspiracy until a very much later date, isn't that right? A. That's correct.

Q. And what is the later date that you pick as the date

—9513—

on which you said they joined this conspiracy of the other defendants? A. The latter part of 1952 or the first part of 1953.

[6076] Q. And what is the event which you believe justifies you in saying that they joined this conspiracy? A. The event was when they made the arrangements with Gulf Oil Corporation to take oil from Kuwait.

Q. It is that event which led you to believe that Cities Service joined the conspiracy? A. As well as their ending up in the International Oil Consortium in Iran.

Q. That came later? A. Yes.

Q. So I say, what is the event which is the initial step in your belief, which constituted their entry into this conspiracy? A. When they decided to make common cause with the cartel companies in stopping Iranian oil from moving by making a contract with Gulf Oil Corporation.

Q. The event that you know of is the making of the contract with the Gulf Oil Company? A. Yes, sir.

Q. And that is why you put Cities Service into this com-

—9514—

plaint as a defendant; is that right? A. That's one reason.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. And the other reason is the Consortium? A. The Consortium. That's all the reasons that I know of at this time.

Q. You have given this matter rather extensive attention in the last few years, have you not, Mr. Waldron? A. Yes, Judge.

Q. You have talked to a great many people? A. Yes, sir.

Q. And you have investigated it in a great many areas? A. We haven't had the privilege of investigating Cities Service's records.

Q. Oh, I understand that. But you have done all that you could do to find out what the facts are? A. Yes, sir.

Q. And of this morning you are telling me—and I assume truthfully—that the two events which you identify as causing you to name Cities Service as a defendant are [6077] the contract with Gulf and the entry into the Consortium? A. Yes, sir.

—9515—

Q. I believe in your complaint you allege that Anglo-Iranian and Gulf, in late August or early September, conspired to offer Cities Service a long-term supply of Kuwait oil at a price far below the international posted price; is that right? A. Yes, sir.

Q. And that Cities Service accepted this offer? A. Yes, sir.

Q. And I believe you also allege in your complaint that Cities Service was thereafter, as a consequence, permitted to buy a participation in the International Consortium in Iranian oil? A. Yes, sir.

Q. Do you have any evidence that you can point to, Mr. Waldron, that Gulf and Anglo-Iranian in fact conspired

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

to make such an offer? Have you anything in writing? A. No.

Q. Did Anglo-Iranian or any officer of the Anglo-Iranian Company orally say so to you or to anyone that you know of? A. No, sir.

Q. Did Gulf or any officer of Gulf say so to you or to anyone that you know of? A. No, sir.

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Q. So I take it that you have neither written nor oral evidence that Anglo-Iranian and Gulf in fact conspired to make such an offer to Cities Service? A. All I know is, Judge, the deal was consummated.

Q. That is right. You know that a contract was made? A. Yes, sir. There must have been an offer and an acceptance.

Q. I didn't ask you about an offer and acceptance from Gulf to Cities Service. I asked you whether you had any writing or any oral proof that Anglo-Iranian and Gulf conspired to make such an offer?

Mr. Lane: In August, 1952.

[6078] Q. (Continuing) At any time. Is your answer still in the negative? A. Yes.

Q. Have you any written evidence that the offer from Gulf to Cities Service was made in August or September of 1952? A. There was an announcement in the paper to that effect.

Q. Have you got that clipping? A. I don't know. I believe I do.

—9517—

Q. Will you produce it? A. I will search for it.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. Is it your recollection that this announcement said that Gulf had made an offer to Cities Service? A. No, Judge. Perhaps I was mistaken there. It was the announcement of the completion of the deal.

Q. You believe that that was announced when? A. I believe that it was announced the middle of 1952.

Q. Now listen carefully, Mr. Waldron, to my question. Have you any writing evidencing the assertion that you have made that in August or September, 1952, an offer for Kuwait oil was made by Gulf to Cities Service? A. Well, Mr. Jones stated in Iran that he had an offer for——

Q. No. I asked you about written evidence. A. I see.

Q. Have you any writing? A. I don't believe so.

Q. I am going to ask you about oral proof. Has any such statement—that an offer was made by Gulf to Cities Service in August or September, 1952—was such a statement made to you by any officer of Cities Service, or made

—9518—

to anyone? A. Yes.

Q. By whom? A. Mr. Jones.

Q. And what did he say and where did he say it and to whom did he say it? A. The statement was made in Iran.

Q. By—— A. At the Pamahy House, in the library. Mr. Parkhideh was there, Mr. Nelson, Mr. Jones and myself.

[6079] Q. What did Mr. Jones say? A. He said he had an offer from across the Gulf at a dollar a barrel. It was on his desk in New York.

Q. He had an offer from whom? A. He expressed it, across the Gulf.

Q. He had an offer of a dollar a barrel from across the Gulf? Is that what you say? A. Yes, sir.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. Did he say in his statement when he had received that offer? A. He merely said that he understood there was an offer on his desk in New York.

Q. Did you understand that to mean that the offer had been made to him in August or September of 1952? A. I

—9519—

don't know when the offer was made.

Q. You allege in your complaint that the offer was made in August or September, 1952, do you not? A. Yes.

Q. What did you have to support that allegation of your complaint? A. Mr. Jones' statement.

Q. Did Mr. Jones say in the statement to which you have referred when he had received that offer? A. No.

Q. What did you have to support the allegation of your complaint that the offer for oil from Gulf to Cities Service was made in August or September of 1952? A. It was the way Mr. Jones expressed it. He said, "I understand there is an offer on my desk now in New York for oil from across the Gulf for a dollar a barrel."

Q. I asked you a minute ago whether anything that Mr. Jones said led you to believe that the offer had just been made. A. It was the attitude with which he expressed the idea that an offer was on his desk in New York.

Q. And that was the basis of your conclusion? A. Yes, sir.

—9520—

Q. You have no other basis than that? A. Not at this time.

[6080] Q. Did you have it at the time of the event? This I assume occurred in Iran in August, you said, of 1952. A. Well, whatever the dates of my visit were.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. When were you in Iran on your third visit? A. I would have to check those dates out, Judge. I have——

Q. You have forgotten? Let me refresh your recollection.

Didn't you go to Iran on your third visit on the 17th of August? A. I believe so.

Q. And that was the same trip on which Mr. Jones was with you in Iran or was in Iran? A. Yes, sir.

Q. How many days did you spend there? A. Again, I would have to check, Judge.

Q. A short period of time? A. Two or three weeks.

Q. Was Mr. Jones in August speaking about something that had occurred in early September? A. I don't know what he was referring to.

—9521—

Q. You said in your complaint that this offer was made by Gulf to Cities Service in August or September. Did Mr. Jones, speaking in August, refer to an offer that had been made to him in September? A. No.

Q. Where did you get the allegation in your complaint that the offer for Gulf Oil was made to Cities Service in August or September of 1952? A. As I have told you, Judge, it was the attitude and the timing with which Mr. Jones referred to it. He said, "I understand there is an offer on my desk in New York for oil from across the Gulf for a dollar a barrel." Now, what date it was that he said it I would have to review my dates on the trip, and I doubt if I could pull out the exact dates even now.

Q. In any event, there is nothing else that you have from which you could infer that the offer was made in August or September of 1952? A. Not at present.

Q. Did you at that time have, while you were in Iran on your third trip, any other basis for that inference, other

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[6081] than Mr. Jones' statement? A. Not while I was in Iran, no.

Q. And since you were in Iran, down to this morning,

—9522—

have you ever had any other basis for that allegation? A. Yes.

Q. And what was that? A. A newspaper article announced the contract between Gulf and the Cities Service Company, which had been kept secret for a number of months, was finally revealed.

Q. Did that article report that the offer had been made in September or August of 1952? A. I don't recall.

Q. Was your statement or your allegation, that the offer was made in September or in August of 1952, derived from that newspaper article to which you referred? A. Your question is not clear.

Mr. Rifkind: Will the reporter read it?

(Question read.)

A. That was the statement of Mr. Jones to me.

—9523—

Q. What was there in the newspaper article which led you to believe that the offer was made in August or September of 1952? A. I would have to re-read the article, Judge, but as I remember it stated that the contract had been made many months previous, between Gulf and Cities Service.

Q. You will of course produce that article? A. I will look for it, yes.

Q. And your recollection is that it did report when the offer was first made? A. I can't say that it did—that it stated when the offer was made.

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Q. Then will you please answer again my question:

Did your allegation in your complaint—a verified com-complaint, I believe——

[6082] Mr. Lane: No.

Mr. Rifkind: No? A non-verified complaint.

Q. The allegation in your complaint that the offer was made in August or September of 1952:

Did that derive from anything other than Mr. Jones' statement in the library in Iran to which you refer? A.

—9524—

Well, as I have mentioned, this article in the paper.

Q. You think it did derive from that article in the paper? A. Judge, we are talking about the offer: I don't know when the offer was made. All I know is the paper reported that a contract was consummated and—between Gulf and Cities Service many months previous to the announcement.

Q. You said you did not know when the offer was made, just a minute ago; right? A. Yes, sir.

Q. Is that still the fact, that you don't know when the offer was made? A. That's right.

Q. And when you alleged in your complaint that the offer was made in August or September, 1952, you took that out of the air? A. No, sir.

Mr. Lane: I object to the form of the question.

Q. Well, when you wrote the words in your complaint that the offer was made in August or September, 1952,

—9525—

did you have any more knowledge about the time of the offer than you have at this minute? A. Judge, I have told

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you, I don't know when the offer was made. All I know is that a contract was consummated with——

Q. That is right? A. —between Cities Service and Gulf shortly after our return from Iran.

Q. You don't know when the offer was made? A. No, sir.

Q. And you didn't know it yesterday? A. No, sir.

[6083] Q. And you didn't know it last year? A. No, sir.

Q. And you didn't know it on the 11th of June, 1956, did you? A. I didn't know the date of the offer. All I knew was that a contract had been signed.

Q. And you didn't know the date of the offer when you alleged in your complaint that it was made in August or September of 1952? A. As I have told you, I don't know the date of the final offer.

—9526—

Q. And you didn't know it when you wrote your complaint? A. As far as the offer goes, yes.

Q. I suppose that means "I didn't," is that right? You didn't know? A. That's right.

Q. What induced you to write in your complaint that the offer was made in August or September when you didn't know the fact? A. Mr. Jones said that there was an offer of oil from across the Gulf on his desk in New York, and some—many months later, the announcement of the contract was published in the paper.

Q. So you guessed that it was made then; is that right? A. Well, it was something more than a guess. Mr. Jones said that there was an offer on his desk, and six or seven months later it was announced that a contract had been signed, so it was fairly definite that the offer was made some time before the—naturally before the contract was consummated.

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Q. But you don't know how long before? A. During that period—no, sir.

Q. You didn't know if it was a month or a year or two

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years? A. All I know is the contract was not consummated between Gulf and Cities Service until after my third trip to Iran.

Q. I see. But for the making of that contract——

Mr. Rifkind: I will withdraw that.

[6084] Q. Have you, other than the making of the contract itself, to which you referred—and I suppose you mean the contract with Gulf with respect to Kuwait oil—is that right? A. Yes, sir.

Q. That is the contract you are talking about? A. Yes, sir.

Q. Other than the making of that contract, have you any knowledge of any fact antedating the making of that contract? Do you follow me? A. I believe so.

Q. Have you any knowledge of any fact occurring prior to the making of that contract, which evidences a participation by Cities Service in the conspiracy which you have alleged in your complaint? A. I think I know what you

—9528—

mean, Judge. Would you clarify it a bit?

Mr. Rifkind: Let me see if it needs it. Would you read it back again?

(Question read.)

A. I don't believe so.

Q. And you never did? A. No.

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Q. Now, you alleged in your complaint that as a consequence of the Gulf contract Cities Service gained a participation in the Consortium; is that right? A. Well, I will have to re-read it.

Q. At the top of page 20:

> "As a further consequence of this conspiracy Cities Service eventually gained a participation in the Consortium agreements relating to Iranian oil hereinafter described."

Right? A. Yes, sir.

[6085] Q. And toward the end of page 21, will you look at that subparagraph 9 of that page.

Do you see the last sentence of that page:

> "Shortly after the signing of the initial Consor-
>
> —9529—
>
> tium agreements, Cities Service was permitted to purchase a participation in the Consortium."

Do you remember that? A. Yes, sir.

Q. Now, what have you in writing to support the suggestion or the allegation of your complaint that Cities Service was permitted to purchase a participation in the Consortium as a consequence of what occurred prior to that time; namely, of this conspiracy to which you say Cities Service participated? A. I have nothing in writing.

Q. Have you anything oral to support that? Did anybody on behalf of Cities Service tell you so? A. No, sir.

Q. Did any of the defendants tell you so? A. No, sir. The events speak for themselves.

Q. It is an inference that you draw from the fact that you believe Cities Service was offered, was permitted to

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purchase a participation in the Consortium; is that right?

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A. Yes, sir.

Q. Was Cities Service alone in being permitted to purchase a participation in the Consortium? A. No.

Q. How many more were permitted to purchase participations in the Consortium after the initial signing of the Consortium agreement? A. Probably either 10 or 12.

Q. Quite a number? A. Yes.

Q. Were they all members of this conspiracy? A. What conspiracy?

Q. The conspiracy that you have alleged, that you say Cities Service joined. A. Yes, sir.

[6086] Q. They were all members of this conspiracy? A. Yes, sir.

Q. How come you didn't name them as defendants? A. Because I had nothing to do with them at the time.

Q. Were they all engaged in the conspiracy to keep you from doing business with Iranian oil? A. Not when I was trying to sell Iranian oil.

—9531—

Q. Well—no, we will let that be.

While you were trying to sell Iranian oil, did Cities Service do anything to interfere with your financing of that transaction? A. You are referring to the Chase National Bank here?

Q. I am referring to nothing. I am asking you a question. A. Well, that is another question which is a yes and no answer.

Q. Well, which is the truth, yes or no? A. At the onset, when we were stopped from financing the transaction with the National Iranian Oil Company at the Chase National

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Bank, I don't believe the Cities Service Company had anything to do with it. What they had to do with financing or stopping my efforts at a later date, I don't know as yet. We haven't had the privilege of going through their records.

Q. You have no proof now that Cities Service interfered with your financing of this transaction? A. No, sir.

Q. Did Cities Service have anything to do with interfering with your getting tankers in 1952 for the carriage

—9532—

of the Iranian oil? A. I don't believe they had anything—they didn't interfere with our trying to get tankers up until they closed the door on us. What they did after that, I don't know.

Q. So at this time you have no evidence to support an allegation that Cities Service interfered with your obtaining tankers for the carriage of Iranian oil to the American market; is that right? A. Yes, sir.

[6087] Q. Did Cities Service have anything to do with interfering with your ability to sell Iranian oil to other purchasers? A. (No response.)

Q. You hesitate. Why? A. I am trying to give you an accurate answer, Judge.

Q. All right. I should like to have an accurate answer. A. We attempted to sell oil to the Richfield Company, and there was great interest evidenced in Iranian oil in substantial quantities. We even had samples flown in for them, because their interest was so immediate, they were so ready

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to do business. Precipitously, they turned us off and said they were not interested in Iranian oil.

Q. You think Cities Service—— A. —knowing of Cities Service's interest in Richfield, they were quite prob-

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ably—there was quite possibly some interference on their part.

Q. You think there might be? A. Yes, sir.

Q. Have you any evidence that there was? A. Not yet.

Q. I say: Have you any evidence at this time? A. No, sir.

Q. At the time you framed your complaint, did you have any such evidence? A. No.

Q. When was the negotiation with Richfield? What year? A. I am trying to think, Judge. I can't place the exact date on it. I believe it was in the early part of——

Q. What year? Was it in 1952? A. I believe it was in 1953. I would have to check that.

—9534—

Q. The early part or the latter part of 1953? A. Probably the early part of 1953.

Q. Did Cities Service circulate threats against persons who would not boycott you or your Iranian oil? A. May I have that question again?

(Question read.)

A. I don't know.

[6088] Q. Have you any evidence that they did? A. No, not yet.

Q. Did Cities Service do anything to generate litigation against people who would buy Iranian oil? A. I don't know.

Q. Aren't you going to add the words "not yet," or is this one different from the preceding question? A. I don't know, Judge.

Q. Do you follow my question? A. Yes, sir.

Q. The last preceding question you said "I have no evidence, not yet." This question you say "I don't know." Why don't you say "Not yet"? A. Well, I was saying "Not yet,"

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Judge, because we haven't had the privilege of looking through the Cities Service files to see what they actually did do.

Q. So when you framed this complaint what you were doing was hoping that you would find evidence to support the allegations as against Cities Service? A. No.

Q. You had no evidence to support the allegations? A. Yes.

Q. The Kuwait contract? A. Yes, and the fact that Cities Service ended up with a piece of the Consortium.

Q. Those are the two factors? A. Yes, sir.

* * *

—9583—

[6116] Q. Did you ever ask for damages for the breach of the contract? A. No, sir.

Q. Is that what you are suing for in this action, a breach of contract? A. I am suing under an antitrust action——

Q. Look, please, Mr. Waldron, answer my question:

Are you suing in this action for an alleged breach of contract by Cities Service for breaking their contract with you that anything they do in Iran would be done through you? A. I believe that is a legal conclusion.

Q. Is that the basis of your claim in this action? A. I am not a lawyer.

Q. I say are you claiming for such a breach in this complaint? A. I don't believe so.

Q. You never did assert a claim of that kind before, did you? That is, that Cities Service had broken its contract with you? A. No.

Q. Did Cities Service ever negotiate with you for the

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purchase of your oil under your contract with NIOC? A. It was understood——

Q. No, no, no, look, answer my question yes or no. A. What is your question?

Mr. Rifkind: The reporter will read it.

(Question read.)

Q. Why do you hesitate? A. I am trying to understand what you mean by the word "negotiate."

Q. Did they offer to buy some of your oil under your contract, or all of it under your contract? A. The only way I can express that, Judge, is that it was understood that they would take oil under our contract, which in turn would become part of a larger overall contract which they would negotiate with the Iranians.

[6117] Q. Were they going to get oil by negotiating with the Iranians, or were they going to take oil from you under your contract? A. The idea being as much as we had an exclusive contract for the United States, that it would be merged with an overall deal that Cities Service was going

—9585—

to make.

Q. Did they ever negotiate with you for the purchase of oil under your contract independent of any other relationship they might have with the Iranian supply? A. No.

Q. You say in your complaint that Cities Service refused to enter into a contract or arrangement with reference to Iranian petroleum. Do you see that on top of page 20? A. Yes.

Q. What was the arrangement or contract that was tendered to them—or I will withdraw the question.

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Was a contract or arrangement tendered to Cities Service by the Iranian authorities? A. I don't know.

Q. Then you don't know that they refused to enter into any contract or arrangement; isn't that right? A. It was certainly expressed to me that it was their intention to enter into it when we left here on two occasions for Iran.

Q. When you say they refused to enter into a contractual arrangement, you do not mean that one was actually

—9586—

offered to them? A. Cities Service was making a proposal to the Iranians.

Q. Oh, when you said that they refused to enter into any contract you meant that they refused to make an offer? A. What I mean by that is that no contract was consummated.

Q. Between Cities Service and Iran? A. Yes.

Q. I would like to know the answer to the question that I addressed to you a minute ago. Did Cities Service refuse?

[6118] Mr. Lane: A contract which was offered to them.

A. I don't know yet.

Q. Did you know at the time you framed this complaint? A. No.

Q. So what you meant was that this complaint was a ticket which would entitle you to make this investigation? A. All I know, Judge, is that——

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Q. No contract was made? A. —no contract was made, and in spite of the intentions which were given to me by members of the Cities Service Company.

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Q. You have been a broker for many years, haven't you? A. Yes.

Q. In the food business? A. Yes.

Q. Have there been lots of times when people expect to make contracts and don't make them? Has that not been your experience? A. It has happened.

Q. In fact, brokerage involves a very considerable amount of activity, doesn't it, in bringing two people together? A. Yes.

Q. And sometimes the deals do not go through? A. There is usually a good reason for them not going through.

Q. Maybe there is no meeting of the minds? A. Or maybe the man gets a better deal from myself.

Q. That's right. So there is not a meeting of the minds;

—9588—

isn't that right? A. Yes, and as I say——

Q. Sometimes the seller refuses, and sometimes the buyer refuses? A. And sometimes the seller comes in, another seller comes in with a cheaper price.

Q. That is right, and sometimes both sides decide that this is not an opportune time to make a deal; is that right? A. I suppose so.

* * *

[6146] Q. Isn't that a correct statement of affairs, that with respect to the entire conspiracy recited in subdivisions 8 and 9, down to Kuwait, down to the making of the Kuwait contract, you have no complaint with respect to Cities Service? A. In general, I would say that is correct, sir.

Q. Now, let's look at Section 10. It would necessarily follow from your last answer that Cities Service, down to Kuwait, was not party to any of the agreements that you

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allege in Section 10 of your complaint, A through H; is that right? Cities Service was not a member of the so-called Achnacarry agreement? A. No.

Q. Or the "As Is" agreement? A. No.

Q. Or the pool association? A. No.

Q. Or the agreements recited in subdivision (b) of Section 10? A. No.

Q. Nor in the agreements recited in subdivision (c) of

—9637—

Section 10? A. Not as far as I know.

Q. Nor (d) of Section 10? A. No.

Q. Nor (e) of Section 10? A. No.

Q. How about (f)? A. No.

Q. There you expressly recited that it did not include Cities Service; did you not? A. Yes, sir.

Q. You said "except Cities Service"? A. Yes, sir.

Q. And the same is true of (g), is it not, that Cities Service was not a party to any of the agreements recited therein? A. That is right.

Q. And (h)? A. I think (h) is a little different, Judge.

[6147] Q. Tell me in what respect. Let's look at it. A. First of all, it takes in the period from 1928 to the present time.

Q. Yes. A. It is my contention that Cities Service, as

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I told you before, cast their lot with the international petroleum cartel to not employ Iranian oil.

Q. So you are saying that (h) applies to Cities Service after the making of the Kuwait contract; is that what you are trying to say? A. Yes.

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Q. We will deal with that more specifically. How about (i)? Let's take (i). Did Cities Service have anything to do with the contract which Anglo-Iranian had with the government of Iran? A. Not to my knowledge.

Q. And did Cities Service have anything to do with the following allegation, on the fourth line from the bottom:

"Following nationalization"—by Iran, I suppose you mean—"the defendants and other companies and persons in furtherance and effectuation of the aforesaid combination and conspiracy"—I am reading the bottom of the page; do you see that? A. Yes, sir.

Q. (Continuing)—"determined and agreed that no one of them or any other person should deal in Iranian petroleum and products until such time as they could effect a resolution that would substantially preserve to them the alloca-

—9639—

tion of resources," and so forth, as recited in your complaint.

Down to Kuwait, did Cities Service have anything to do with those arrangements? A. I don't believe so.

Q. Let's look at subdivision (1) on page 14. You say, "Beginning on September 14, 1951, Anglo-Iranian caused to be published numerous threats."

Did Cities Service have anything to do with the publication of such threats? A. No, sir; not to my knowledge.

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[6148] Q. Then you say in subdivision 2:

> "Plaintiff obtained from the National Iranian Oil Company . . . an exclusive five-year contract for the sale of Iranian petroleum and products in the United States"——

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and so forth.

Then you say:

> "When these facts became known to the defendants, Anglo-Iranian through its New York attorneys caused to be sent to plaintiff and others on August 1, 1952, letters threatening action against them."

Did Cities Service have anything to do with that? A. I don't believe so.

Q. Let us look at subdivision 3. Before we get to that, there is another allegation in subdivision 2 which says, about the sixth or seventh line from the top—— A. Yes.

Q. It says:

> "Anglo-Iranian sought and, with the aid of the other defendants and others, achieved an effective boycott of Iranian oil."

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Did Cities Service have anything to do with that, down to Kuwait? A. When you say "'Kuwait," Judge——

Q. The making of the Kuwait contract. A. The negotiations preceding?

Q. Including the negotiations. A. Yes, I see. No.

Q. Perhaps I could fix a date. Prior to, say, September 1, 1952 or August 15, 1952. A. Yes.

Q. It had no part in that? A. That's right. Not to my knowledge.

[6149] Q. That is, not to your knowledge? A. That's right.

Q. You say in the next sentence:

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"The defendants' purpose was so to weaken the Iranian economy as to force the Iranian Government to return its oil concessions,".

and so forth.

Did Cities Service identify itself with that purpose before the end of August, 1952? A. No, sir.

Q. In subdivision 3, you say:

"In furtherance of their boycott of Iranian oil

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. . . the defendants caused the knowledge to be disseminated among tanker operators that any tanker operators participating in the delivery of Iranian oil would be forever blacklisted,"

and so forth, as recited in subdivision 3, on page 16.

Again, prior to the making of the Kuwait contract. Is it your statement that Cities Service had anything to do with such conspiracy? A. No.

Q. Subdivision 4. You say:

"In aid of their common conspiracy with Anglo-Iranian, the defendants Jersey, Texas, Socal, Gulf and Socony refused to purchase Iranian oil."

You do not include Cities Service among those—before Kuwait? A. Not to my knowledge.

Q. You say:

"Defendants further reinforced their boycott of Iranian petroleum and products in pursuance of their monopoly and conspiracy by indicating that

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they would not look with favor upon any of their subsidiaries, [6150] agents or purchasers who dealt either directly or indirectly in Iranian petroleum,"

and so forth, as alleged in subdivision 4.

Did Cities Service have anything to do with that prior to the making of the Kuwait contract? A. Not to my knowledge.

Q. In subdivision 5 you allege:

"Defendants or some of them caused normal and customary financial services necessary to the transaction of international business to be denied to plaintiff."

Do you include Cities Service in that allegation? A. No, sir.

Q. That goes for the entire subdivision 5? A. Yes, sir.

Q. Subdivision 6 we have covered.

Subdivision 7 deals with an offer of a possible transaction for the purchase by the United States Air Force of a large quantity of aviation gasoline. Do you see that? A. Yes, sir.

Q. "However, Anglo-Iranian refused to modify in any

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way its effective boycott of Iranian oil notwithstanding plaintiff's warranty that the gasoline would be restricted to direct sales to the United States Military forces."

Did Cities Service participate in that transaction or become involved in that allegation?

Do you charge that Cities Service interfered with your sale of aviation gasoline to the United States? A. No.

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Q. In subdivision 8 you say that:

> ". . . plaintiff entered into negotiations with numerous other prospective purchasers all of whom ultimately concluded that the risks of extended litigation with Anglo-Iranian and future economic sanctions by [6151] the other defendants, their subsidiaries and agents were too great for them to assume."

Limiting your answer to the period prior to the making of the Kuwait contract, did Cities Service contribute in any way to the magnitude of the risks which these prospective purchasers assumed? A. I don't believe so.

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(Short recess.)

Q. You say that in subdivision 9, on page 21, that on October 29, 1952, a number of the defendants entered into a so-called Consortium agreement. Do you see that? A. Yes, sir.

Q. Was Cities Service a member of the Consortium agreement made on October 29, 1954? A. Well, to be completely accurate about it, Judge, they came in at a little later date.

Q. They were not a member? Isn't that what you said? A. Well, they came in a little later.

Q. Answer the question. Were they a member as of October 29, 1954? A. I don't believe so.

Q. You allege in your complaint that they were not. You say that the parties were Anglo-Iranian, Jersey,

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Socal, Texas, Gulf and Socony. You did not include Cities Service, did you? A. Well, it speaks for itself.

Q. Did you intend to include Cities Service? A. With others.

Q. When you say "with others," did you mean to in-

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clude Cities Service? A. I believe so.

Q. You believe so? A. Yes.

Q. And why did you in the last sentence say that Cities Service joined later? A. Well, that is what I was getting to, Judge. They were not originally participating members of the Consortium. They joined at a later date.

Q. So in the first sentence of subdivision 9, you did not mean to include Cities Service? A. No.

Q. Is that correct? A. Yes, sir.

Q. Very well. Now, Mr. Waldron, for convenience and in order to move along more rapidly, I asked you a great many questions with the prefix "down to Kuwait." Do you remember that? A. Yes, sir.

Q. Meaning the transaction relating to the making of the contract for Kuwait oil between Gulf and Cities Service. A. Yes.

Q. I would like to have you put your mind to the period

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following the making of that contract, and to save time, all my questions will be related to the following:

But for the making of the Kuwait contract and the reference to the Consortium—but for those two things. Think of that as a prefix to all the questions I am about to ask you for the next few minutes.

Do you understand that, Mr. Waldron? A. Yes, sir.

Q. All right. Since the making of the Kuwait contract,

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did Cities Service do anything to participate in the conspiracy to secure, maintain and exercise control over the foreign product and supplies of petroleum and petroleum products? A. This is all prefaced with "but for the"——

Q. But for the making of that contract and the subsequent obtaining of permission to participate in the Consortium. A. I don't know.

Q. Have you any evidence to suggest that there were any such acts other than those two? A. Not at the moment.

Q. And you did not have any when you framed the com-

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plaint? A. Not that I know of.

[6153] Q. And when you say "Not at the moment," do you mean that you expect some mail in the office tomorrow which would give you that information? A. No, sir.

Q. Or that some informer is waiting for you around the corner to tell you something? A. No. What I referred to, Judge, is the examination of Cities Service's files and the examination before trial of Cities Service.

Q. You mean, you may be able to find something that you do not know now, by engaging in some further exploration? A. Yes. I am sure we will.

Q. I am sure many a plaintiff has broken the keel of his vessel on that kind of a hope.

But for those two events that have already been mentioned, have you any evidence to suggest that Cities Service was a party to a conspiracy or did any acts to further a conspiracy to divide foreign producing and marketing territories? A. I don't know.

Mr. Lane: The question is, have you ever.

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A. (Continuing) No.

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Q. But for those two events, have you any evidence that Cities Service was party to a conspiracy or did any acts in furtherance of a conspiracy to maintain and correlate domestic and world prices of petroleum and products? A. The same answer.

Q. No? A. Yes.

Q. And but for these two events, have you any evidence to suggest that Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to control imports of petroleum and petroleum products into the United States? A. No.

Q. And but for those two events, have you any evidence that Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to control exports of [6154] petroleum and petroleum products from the United States? A. The same answer.

Q. And but for the two events we have mentioned, have you any evidence that Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to

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exclude United States companies and persons other than the defendants from the opportunity to engage outside the United States in the production and refining of oil and oil products and from importing into the United States such products manufactured by themselves? A. The same answer.

Q. And but for the two events, have you any evidence that Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to exclude United States companies other than the defendants from the opportunity to import oil and oil products produced in foreign countries

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by the defendants and other companies? A. No. Not yet.

Q. But for the two events, have you any evidence that Cities Service was a member of the conspiracy or did acts in furtherance of a conspiracy to enter into long-term supply contracts to prevent sale of foreign produced oil and oil products to competitors? A. No. Not yet.

Q. And but for the two events, do you have any evidence that Cities Service was a member of a conspiracy or did

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acts in furtherance of a conspiracy designed to eliminate or restrict competition in foreign markets? A. No. Not yet.

Q. And but for the two events, have you any evidence that Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to cause the formation of local Cartel agreements to suppress and eliminate competition in various foreign markets and area? A. That's [6155] one I keep sticking on, Judge. There's something in the back of my mind. I don't have it——

Q. You cannot think of anything now? A. That's correct.

Q. If something occurs to you, come back and tell me about it tomorrow. A. Yes, sir.

Q. But for the present, your answer is in the negative? A. Yes, sir.

Q. And have you any evidence that but for the two events we have mentioned, Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to

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control and predominate part of the world's commercial tanker fleets and to exclude others from the opportunity of utilizing such tankers? A. No.

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Q. But for the two events, have you any evidence that Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to acquire the business facilities of other companies engaged in activities outside the United States? A. No.

Q. And but for the two events, have you any evidence that Cities Service was a member of a conspiracy or did any acts in furtherance of a conspiracy to secure uniform non-competitive bids for petroleum products required by the United States Government? A. That's another one I keep sticking on, Judge. None that I recall at the moment.

Q. Since Kuwait, has Cities Service threatened anyone if they were to engage in buying Iranian oil? A. Not that I know of.

Q. Did Cities Service do anything since Kuwait to interfere with anyone's trading in Iranian oil? A. I don't know.

Q. Have you any evidence that they did? A. Not other than they are a part of the——

[6156] Q. Except for the making of the Kuwait contract itself and the obtaining of permission, as you say, to participate in the Consortium. A. Well, I would like to augment that permission to obtain—permission to enter the Consortium to the fact of the action of the Consortium.

Q. What I want to know is whether you have any evidence that Cities Service did anything about it. A. I don't know.

Q. Have you any evidence? A. No. They belonged to the Consortium, and the Consortium has certain rules, and they abide by them.

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Q. What I want to know is if you have any evidence that Cities Service did anything to interfere with anyone trading in Iranian oil since Kuwait, since the fall of 1952. A. Well, I have told you that Richfield was going to buy

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some oil and precipitously they lost interest in it.

Q. Have you any evidence that Cities Service was instrumental in Richfield's position on that? A. No evidence other than the fact they were interested and they precipitously dropped me.

Q. Richfield? A. Yes.

Q. Have you any evidence that Cities Service was instrumental in Richfield's decision with respect to that matter? A. Well, they owned a third of the company. No direct evidence as yet.

Q. Or—— A. Well, I will let the facts speak for themselves.

Q. That they owned a third of the company? A. Yes.

Q. And refused to take oil from you? A. Yes.

Q. I am asking you what evidence you have, written or oral, that Cities Service brought about Richfield's decision with respect to Iranian oil. A. None as yet.

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Q. Since Kuwait, have you any evidence that Cities Service blacklisted any tanker operators? A. No.

[6157] Q. Or threatened to blacklist any tanker operators? A. I don't know.

Q. Have you any evidence? A. Not yet.

Q. Since Kuwait, has Cities Service at any time intimated or told anyone that it would look with disfavor upon purchasers who dealt in Iranian oil? A. I don't know.

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Q. Have you any evidence that they did? A. No. Not yet.

Q. Since Kuwait, has Cities Service done anything to cause normal and customary financial services to be denied to you? A. No. Not that I know of.

* * *

[6331] Q. Did you leave the Cities Service offices after that lunch? A. Yes. We left.

Q. Where did you go? A. I don't recall.

Q. Did you go back to Denver? A. Oh, yes. Yes.

Q. You were living in Denver. A. Yes.

Q. I didn't think I would have to remind you of that. A. I thought you meant, what other offices we went to.

Q. Did you go to see anybody else? A. Not that I recall.

Q. Shortly thereafter, did you return to Denver? A. Yes, sir.

Q. How long after that? A. It would be hard to give you an exact date.

Q. A day or a month? A. I would say just a few days.

Q. A few days. Did you transact any business after that conversation with relation to Iranian oil? A. Not that I recall.

Q. You and Nelson both went back together? A. No. It seems we went back separately.

Q. Did Mrs. Nelson come back with Mr. Nelson, or did he leave her in Paris? A. Mr. and Mrs. Nelson came back together from Paris.

[6332] Q. They did. So they were here together with you? A. Yes.

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Q. And then you went on to Denver, and they went on to Denver, but at different times? A. Yes.

Q. Who went first? A. I don't recall.

Q. Did you see anything of the Lowes during that in-

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terval? A. Yes. That's quite true. We did.

Q. Oh, I am just guessing. When did you see Mr. Lowe? A. Mr. Lowe had a dinner party for us at his house.

Q. When did that—— A. I believe it was during World's Series time. I didn't get to the Worlds Series, but——

Q. Was it after or before the conversation with Watson? A. I'm not positive, but I believe it was afterward.

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Q. It was probably the last thing, was it not, another farewell party? A. It could have been.

Q. On your way back to Denver? A. Yes.

Q. So you think it must have been after the Watson conversation? A. I believe so.

Q. Who were present at this dinner party? A. Mr. and Mrs. Nelson; my wife, myself; Mr. and Mrs. Carter.

Q. Were Mr. and Mrs. Lowe there? A. Yes, of course.

Q. Any other people present? A. Not that I recall.

Q. Was there any business discussed at this dinner party? A. Not that I recall.

Q. Were the relations cordial and friendly? A. Yes.

Q. Despite the lowering of the curtain? A. Yes, sir.

Q. That did not disturb your cordiality or the cordiality of your relations with Cities Service personnel? A. No.

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Q. You agree with me, in other words? A. Yes, sir.

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Q. Let me ask you, are you sure this dinner party took place at the Lowe or the Carter home? A. I am sorry, the Carter home in Greenwich, Connecticut.

Q. It was not at the Lowe house? A. That is correct.

Q. So this was a party given by the Carters? A. Yes, sir.

Q. And the Lowes were guests at that? A. Yes.

Q. And you met them there? A. That is correct.

Q. You came out to Greenwich, is that where it was? A. Yes, sir.

Q. Connecticut? A. Yes.

Q. When you met Mr. Lowe did you greet him? A. Of course.

Q. And he greeted you? A. Of course.

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Q. Did you say to him "Have you heard what Watson told me? A. I don't recall.

Q. Did he say to you "Did you get the bad news from Watson?" A. No.

Q. What did he say to you and what did you say to him? A. I don't recall.

Q. Did you talk Iran at all that night? A. I think we spoke of some amusing incidents and one thing or another.

Q. No business? A. No, I think the men ended up playing Poker, that I recall.

Q. And the ladies? A. I don't know what they did. Played something else, I think Bridge.

Q. Nobody played Charades? A. No.

Q. Was there a climate at this party which would indicate that the Iranian adventure had come to a close? A. No.

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Q. Was there a climate at that party which would indicate that the Waldron-Cities Service phase of the adventure had come to a close? A. No.

Q. Did the climate of that party indicate that the coventure of Waldron-Nelson-Carter group with Cities Ser- [6334] vice was still in full bloom? A. What is that question, please?

(Question read.)

A. Some of the freshness of the bloom had been eliminated by then but the cordiality was there and the possibility that things could be renewed in the right circumstances.

Mr. Watson told us that the door was always open to us at Cities Service and that he would at any or at all times be glad to advise us and help us in any way he could.

Q. The party broke up late that evening, I suppose? A. Yes.

Q. Everybody say goodbye to each other? A. Yes.

Q. Any expressions of intentions of re-meeting? A. We had a standing invitation to come into the Cities Service offices any time we were in New York.

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Q. But you had no unfinished business on Mr. Lowe's desk? A. Not that I recall.

Q. Or on Mr. Watson's desk? A. Not that I recall.

Q. The thing had been closed, fini? A. In view of Mr. Watson's statements and the general situation we realized that the—we felt that the thing was in abeyance. Mr. Watson said on several occasions they were not interested now. Mr. Whetsel kept telling us the situation might open up.

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Q. But for the present there was no pending business between you? A. That is right.

Q. When is the next time that you saw any Cities Service people at all? A. I am trying to get it chronologically Judge. I believe some time after the first of the year.

Q. So during the balance of October, November and December you did not have any visit with any Cities Service people? A. No personal visits, Mr. Carter said he was in touch with them weekly or daily.

[6335] Q. No, you. A. No.

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Q. Or Nelson? A. No.

Q. You weren't in New York during that period, were you?

Mr. Lane: Does that include telephone calls?

Mr. Rifkind: I will develop that.

Q. You didn't get to New York during this period, did you? A. What period are we discussing?

Q. The latter part of October, November and December. A. Yes, I was in New York.

Q. You did get to New York during this period? A. Yes.

Q. But you did not call on the Cities Service offices? A. Not that I recall.

Q. How many times were you in New York during the three-month period? A. I would have to check that out again.

Q. More than once? A. Once or twice.

Q. Did you spend some time here each time? A. Yes.

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Q. As much as several days or a week? A. Yes, several days.

Q. But you did not call on the Cities Service people during those visits? A. To the best of my knowledge we didn't.

Q. When you say we, you mean Nelson was here with you? A. Yes.

Q. You both came together on both trips, if there were two? A. I believe so. I am not positive of that.

Q. But in any event you are sure that you did not call at 70 Pine Street or 60 Wall Street? A. We may have, I don't recall.

Q. You have no recollection of such a visit? A. No.

[6336] Q. Cities Service people did not communicate with you when you were in New York? A. Not that I recall.

Q. When is the first time you do recollect a contact between you and Cities Service personnel after this Carter party? A. The first contact I believe after this was a

telephone call I received from Whetsel which I arranged through Mr. Shaw in Denver, to have Mr. Whetsel call me.

Q. You asked Shaw to have Whetsel call you? A. Yes.

Q. Did Mr. Whetsel call you? A. Yes.

Q. Did you discuss Iranian oil? A. Yes.

Q. What did you say and he say—first approximately the time. A. I would say the first week or so in November.

Q. All right. Whetsel called you? A. Yes.

Q. In Denver? A. Yes.

Q. Where was Whetsel when he called you? A. In Chicago.

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Q. Was he there on business? A. He was attending the API convention.

Q. The American Petroleum Institute? A. Yes, sir.

Q. Why did you ask Mr. Shaw to ask Mr. Whetsel to call you? A. Because I had been offered some Mexican oil

—9976—

from the Sharmex Company in Mexico.

Q. You wanted to know if Whetsel would be interested in it? A. Yes.

Q. Did you put the proposition to Whetsel? A. Yes, sir.

Q. Did he accept it? A. No, Mr. Whetsel, after telling him about the availability of this oil from Mexico, he knew about it. He knew the characteristics of the crude and so on. He told me in substance that the situation was pretty much in balance in relation to Cities Service, in relation to their selling and buying and as such, they would not have any interest in Mexican oil.

* * *

Q. You did not see anybody at Cities Service or of Cities Service personnel at or about the time of your telephone conversion with Mr. Whetsel? A. No, sir.

Q. When did you next see anybody from Cities Service? A. To the best of my recollection, it was February or March of 1953.

Q. Just to go back for a minute to the Whetsel conversation, is there anything about that conversation that you want to add? A. Nothing that occurs to me now.

Q. As far as you know, you have given us the substance of the entire conversation? A. Yes, sir.

Q. And that occurred, as you told us, in early November of 1952? A. Yes, sir.

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Q. And you say that the next contact with any Cities

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Service personnel was not before February or March of 1953? A. That's the best of my knowledge at this time.

Q. And what then were the circumstances of your next contact with people from Cities Service? A. Mr. Nelson and I were in New York, and we called—made an appointment with Mr. Watson.

Q. Let me ask you: Was that the first visit to New York from November, the early part of November, until then? A. No. As I recall, there were several visits to New York.

Q. But during those other visits, you did not trouble anybody at Cities Service? A. Well, I don't know what you mean by "trouble."

[6340] Q. I mean, communicate with them. A. Not that I recall.

Q. That is what I mean. So I take it, then, that from the latter part of October or the middle of October, when you had the dinner party at the Carters', down to February or March of 1953, you had a number of visits to New York, but during those visits you did not communicate

—9982—

with any Cities Service personnel? A. I believe that's right.

Q. But in February or March, you did communicate with Mr. Watson? A. Yes, sir.

Q. By telephone, after you arrived in New York? A. Yes, sir.

Q. You didn't send them a letter or a telegram in advance of your arrival in New York? A. I don't believe so.

Q. When you got here, you and Nelson were together? A. Yes, sir.

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Q. And did you come here together in connection with your enterprise in Iranian oil? A. Yes.

Q. Not in connection with some other enterprise? A. No.

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Q. And you were going to see other people besides Mr. Watson or did you come here expressly for the purpose of seeing Mr. Watson? A. No, we were here and thought we would see Mr. Watson.

Q. That was not the object of your trip? A. No, sir.

Q. To New York? A. No, sir.

Q. Did you have any trouble establishing a date with Mr. Watson? A. No, sir.

Q. The door was open to you? A. Yes, sir.

Q. You called up and he said come on down, something like that? A. Yes, sir.

[6341] Q. You went down? A. Yes, sir.

Q. And met at his office? A. Yes, sir.

Q. Who else was present? A. Mr. Watson, and Mr. Nelson, and myself.

Q. The three of you? A. Yes, sir.

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Q. Carter wasn't there? A. No.

Q. Lowe wasn't there? A. No.

Q. No other Cities Service personnel? A. No.

Q. Just the three of you? A. Yes, sir.

Q. What did you say? A. I can't give you the exact words.

Q. Give me the substance of what you said. A. Mr. Watson welcomed us, said he was glad to see us. Any time we came to New York the facilities of the sweat room were

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available to us and asked how business was. Dick Nelson told him business was very poor.

Q. What business was he referring to? A. Our normal brokerage business in Denver. Mr. Nelson pointed out to Mr. Watson that business was bad, we had taken a number of months off in behalf of——

Q. The Iranian transaction? A. Cities Service, yes.

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And Mr. Watson said he was very sorry to hear this.

Mr. Nelson suggested that maybe something should come forward from Cities Service for the time lost and business, really the business lost because we were away from our office.

Q. Some compensation or at least to make up the loss you suffered? A. For the loss of business, yes.

Q. That was the object of your visit to Watson or did this come up by accident? A. It wasn't our primary purpose for the visit to New York.

Q. Was it the primary purpose of your visit to Watson? A. Yes.

[6342] Q. In other words, you and he had agreed when you saw Watson that you would ask him for this? A. Yes.

Q. You brought the subject up at your first opportunity? A. Yes.

Q. What did you say about that after Nelson made this proposal? A. Mr. Watson asked me "Is the same business

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situation with you, Mr. Waldron?"

And I said, "Yes."

He said, "Well, I think we can do something about it."

Q. All right. A. He suggested that he could perhaps arrange through Mr. Carter some commissions on oil that

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would be given to Mr. Carter, who in turn would give it to us.

Q. That is what he said? A. Yes.

Q. Did you discuss any other subject? A. I think we expressed a mutual hope that something could be worked out on the Iranian oil.

Q. You brought up Iranian oil? Just tell me what you said. A. I don't recall precisely what I said.

Q. What was the substance? A. We expressed a mutual hope that something——

Q. I would like to hear what Mr. Waldron said. A. I believe we told him we were still working on it.

Q. You were still working on it? A. Yes.

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Q. You and Nelson? A. Yes, sir.

Q. Did he ask you what form your work was taking? A. I don't believe so.

Q. Did you tell him? A. We may have; I don't recall.

Q. What did he say in response to your statement that you were still working on the Iranian oil? A. I don't recall.

Q. Did he express any interest in behalf of Cities Service? A. No.

[6343] Q. Did he wish you luck? A. I don't recall.

Q. Indeed, what had you been doing during your visit to New York about Iranian oil? A. As I testified before, we were working on an exchange of sugar, asking the Holly Sugar Company to go to Iran and take over the sugar in exchange for Iranian oil.

Q. A sugar-oil deal? A. Yes.

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Q. Did that conversation take very long? A. I would say it was a half hour, 40 minutes, 45 minutes.

Q. Well, a half hour to 40 or 45 minutes, you covered more ground than you indicated thus far? A. That is all I recall at this time.

Q. Anything more happen? A. I don't believe so. Mr. Watson did spell out how the funds would come from Mr. Carter. He said Mr. Carter would come up to see us in Denver. I suggested that—I asked him if it would be all right if I would call Mr. Watson to double check on the——

Q. Amount? A. Yes.

Q. Did Mr. Watson ask you to tell how much the amount would be? A. He said something in the neighborhood of the commission on three or four cargoes.

Q. Had he asked you how much money you had been out of pocket or lost by reason of your diversion from the business? A. Mr. Nelson told him of several pieces of

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business he had lost, foreign business, by not being in the office.

Q. Did you and Nelson add up the amount of money you wanted? A. No, sir.

Q. Did you tell Mr. Watson anything about it? A. No.

Q. Was there any suggestion as to how much it should be? A. No, sir.

Q. You left it entirely up to Mr. Watson to determine the amount? A. Yes, sir.

[6344] Q. Why did you say it was measured by the amount of business losses? A. It wasn't measured by the amount of business losses. It was to compensate us for the loss of business while we were away.

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Q. But you did not specify how much business you had lost? A. That is right.

Q. Did you anticipate a large amount, a small amount of money? A. We anticipated whatever the commission

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was going to be on three or four cargoes.

Q. Did you have any idea how much that would be? A. No.

Q. Did you know if it would be $100,000 or $500,000? A. I don't believe we had any figure in mind.

Q. You are very sure you did not tell Mr. Watson how much you would like to receive? A. No, sir.

Q. Or how much you lost? A. No.

Q. Or how much you had suffered by way of loss of business? A. I don't believe figures were discussed as such.

Q. Not at all? A. Not that I recall.

Q. Did it take any effort to persuade Mr. Watson to come to your aid this way? A. No, not at all. Mr. Watson was very mild and very pleasant about the whole matter.

Q. Did he say anything which would indicate that he

—9991—

expected such a request on your part? A. No.

Q. Had you in any way communicated to him in advance that you wished such a payment? A. Not that I remember.

Q. But he was quite ready with the idea when you mentioned it? A. Yes, I believe also at this meeting we discussed the possibility of selling Cities Service some of the things they purchased.

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Q. I see. You mean, supplies? A. Yes.

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[6345] Q. And what did he say about that? You suggested that? A. Yes.

Q. What did he say about that? A. He said he thought that something could be worked out that would be agreeable—we told him, of course, everything that we offered him would be at the market competitive level, and so on.

Q. Did you threaten to sue him? A. No, sir.

Q. Did you indicate to him that if he didn't pay you you would take any kind of reprisals against him? A. No, sir.

Q. Did any such thing cross your mind? A. No, sir.

Q. And when you left the office, you and Nelson felt that it was a rather easy meeting? A. Yes.

Q. You were quite pleased? A. Yes.

Q. Did you see anybody else at Cities Service while you called on Mr. Watson? I mean, in connection with the same

—9993—

visit downtown. A. Not that I recall.

Q. You didn't walk into Lowe's office? A. I don't believe so.

Q. Or Frame's? A. No, sir.

Q. Or Whetsel's? A. No, sir.

Q. Or anybody's? A. No, sir.

Q. It was only Mr. Watson? A. That's the best of my recollection.

Q. And have you searched your memory with respect to that transaction? A. Yes, sir.

Q. And that is all that you can recall? A. Yes, sir.

Q. You have told us everything that happened on that occasion? A. I believe so.

Q. You were not sure whether it happened in February or March. Do you think that by searching your mind you

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might be able to fix it either in February or March? A. [6346] As I believe, it was the latter part of February or the first part of March.

Q. March. Could you correlate it with a visit to any other person concerning which you would have a better date? A. Yes. We had come from Washington. I would have to check back on those dates, Judge.

Q. Would you do that? A. Yes.

Q. And shortly after that visit, did you go back home or stay in New York? A. I stayed here a day or two and then went back to Denver.

Q. How soon after that did you actually receive any money from Mr. Carter? A. To the best of my recollection, it was two or three weeks.

Q. And how did that come about? Can you give me the circumstances? Did you come to New York? A. No, sir. Mr. Carter came to Denver.

Q. Did you expect him? A. Yes.

Q. He had written you or telephoned you, saying that he was coming? A. I am trying to search my memory to

—9995—

see if he wrote us or telephoned us.

Q. But he communicated with you? A. In some way, we knew he was coming, and we met him downstairs at the Union Station.

Q. He came by train? A. No. He came by plane, but our offices were in the Union Station building.

Q. And you and Nelson were together? A. Yes.

Q. And you took him upstairs to your office, or did he go to a hotel? A. I took him to our office.

Q. And Nelson joined you? A. Yes.

Q. The three of you were together? A. Yes.

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Q. The three of you were there? A. Yes.

Q. Was anyone else there? A. No.

[6347] Q. What did Mr. Carter say to you? A. Carter said in substance that he had talked to Mr. Watson, and pursuant to our previous conversation with Mr. Watson he was there, and that he had two checks for us.

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Q. One for each of you? A. Yes, sir; for $5,000 apiece.

Q. Go ahead. A. And he said the additional money would be paid us, I believe, the 1st of June.

Q. Did he say how much additional money would be paid? A. I believe it was something less than $5,000 each.

Q. Did he say how it was calculated? A. It was based, as I recall, upon commissions on cargoes of oil.

Q. How many cargoes? A. I believe he said it was two or three.

Q. And what did you say when he said all this? A. At the same time, he told us that he had these checks for $5,000 each, that—well, first of all, I suggested that Mr. Watson had said that we have commissions on three or four cargoes.

Q. Instead of two or three? A. Yes. And he said that he would be glad to take that up at a later date, but this is what he had now, and we could take it or leave it.

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Q. Did he have any other conversation you? A. Yes.

Q. What did he say? A. Well, we had luncheon with him. We had dinner with him. We were with him all day.

Q. General conversation? A. Well——

Q. Anything about the checks? Anything more about the checks? A. Yes. He said that—he pulled out of his pocket before we were given the checks a couple of pieces of

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paper, one of which was handwritten, I recall, and there was another couple of sheets of paper. He wanted me to make copies of these two pieces of paper, and he wanted us to sign these two pieces of paper before he gave us the money.

Q. There was some drafted language on the two pieces of paper? A. Yes.

[6348] Q. And did you have it typewritten? A. Yes.

Q. And did you sign it? A. Yes.

Q. Did Mr. Nelson sign it? A. Yes.

—9998—

Q. They have been marked for identification? A. I believe so.

Mr. Rifkind: Then we have it.

Mr. Costikyan: Yes. We have it.

Q. What else occurred? A. Well, immediately after we had these copies put on my letterheads, Mr. Carter picked up the phone and called The Brown Palace Hotel and asked for Mr. Lowe. This was the first time we heard that Mr. Lowe was there, and we were amazed to know that he was in town, because we hadn't been informed.

Q. That he was in Denver? A. Yes.

Q. Go ahead. A. We said, "Is Bill Lowe here in town with you? He said, "Yes. He came out on business, and we found ourselves on the same plane together, and he's staying at the Brown Palace Hotel."

Q. Did you meet Mr. Lowe? A. Mr. Lowe arranged for us to have lunch with him.

Q. And did you? A. Yes.

Q. Was anything said at the luncheon meeting other

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than small talk? Well, let me see if I can refresh your memory. A. Nothing that I can recall now.

Q. Did you check with Mr. Lowe whether the amount of money you had received was the authorized amount? A. I don't believe so.

Q. And did you check with Mr. Lowe as to whether the statement you had signed was the authorized statement? A. I don't believe so.

Q. Was the subject matter of the payment made to you [6349] referred to at all during this luncheon meeting? A. Not that I recall. These two pieces of paper we signed were addressed to Mr. Carter.

Q. Addressed to Mr. Carter? A. Yes.

Q. And you delivered them to Mr. Carter? A. Yes.

Q. Did you retain a copy for yourself? A. I believe so.

Q. And Nelson took a copy? A. Yes.

Q. They were typed on your letterhead, right in your

—10000—

office? A. I believe so.

Q. But no mention of it was made to Mr. Lowe during your luncheon meeting? A. Not that I remember right now.

Q. Did you thank Mr. Lowe? You asumed that this money came from Cities Service, didn't you? A. Yes.

Q. Did you thank Mr. Lowe for it? A. As I recall, I don't remember any discussion on it.

Q. Did you express disappointment to Mr. Lowe as to the amount of it? A. No. I was going to check with Mr. Watson on that.

Q. And you were not going to dilute your conversation with Mr. Lowe? A. I believe that's right.

Q. So, did you talk about Iranian oil at this luncheon meeting? A. To the best of my recollection, nothing other than various incidents and personalities.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. Just small talk? A. I believe so.

Q. And after lunch, did you go back to your office? A.

—10001—

I believe so.

Q. Did you see Mr. Lowe again before he left? A. Yes.

Q. When did you see him again? A. At dinner.

Q. Who was present at dinner? A. Mr. Lowe, Mr. Carter, Mr. Nelson, his wife, and me and my wife.

Q. Where did you have dinner? A. At the Brown Palace Hotel.

[6350] Q. Who was hosting there? A. Mr. Lowe, I believe.

Q. And this was a social hour? A. Yes.

Q. There was no business talked at that time? A. Not that I recall.

Q. Nothing was said at the dinner meeting or the dinner party about the checks? A. Not that I recall.

Q. Or about the receipts? A. No.

Q. Or about Iranian oil? A. Nothing that I recall now.

Q. It was a cordial meeting? A. Very.

—10002—

Q. Friendly? A. Yes, sir.

Q. And did Mr. Lowe say when he was leaving Denver? A. Yes.

Q. What did he say? A. I believe they were leaving Denver that night at 11 or 12 o'clock.

Q. Did he say "When you come to New York, knock at my door," or words to that effect? A. I believe so. I'm not sure.

Q. Or did he say, "Don't you poke your face into my door any more"? A. I don't believe so. No.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. And you said goodbye on a friendly basis? A. Very friendly.

Q. You didn't see him off to the plane—or did you? A. No.

Q. You did not? A. I don't believe so.

Q. Did you see anyone from Cities Service or communicate with Cities Service after this occasion? A. Yes.

—10003—

Q. When is the next time that you communicated with or saw anyone from Cities Service? A. As I recall, there was some exchange of letters relative to some items that we wanted Cities Service to consider purchasing. I believe I saw Mr. Lowe one or two more times in this connection.

Q. In New York? A. Yes.

[6351] Q. First let me see if I can follow through. Did you call Mr. Watson and check with him as to whether the amount of money you got was the right amount? A. Yes.

Q. When did you do that? A. I believe it was the day after Mr. Carter left.

Q. You called him on the long distance? A. Yes, sir.

Q. Did you have any trouble reaching him? A. No, sir.

Q. Did he talk to you? A. Yes, sir.

Q. And what did you say to him and what did he say to you? A. In substance, I asked Mr. Watson if the checks which Mr. Carter had given us plus the additional checks

—10004—

which were to be forthcoming in June was the amount that was set up by him for Mr. Nelson and me, and Mr. Watson said, "This is one of those things we just can't discuss over the telephone. Whatever Mr. Carter did was right."

Q. And that was the end of the conversation? A. Substantially; yes, sir.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. Did you complain of the adequacy of the amount to Mr. Watson? A. No. I had asked Mr. Carter after we had been given the checks if he would go back to Mr. Watson, because Mr. Watson mentioned three or four cargoes—I think this was two or three—if he would go back and see if he couldn't get us the additional cargo or two.

Q. That you have already mentioned? A. Well, okay.

Q. Was this a very brief conversation with Mr. Watson over the telephone? A. Yes.

Q. Was Nelson in on it? A. I believe so.

Q. On the extension? A. I believe so.

Q. Who did the talking: you or Nelson? A. I did.

—10005—

Q. And did you tell him that you had signed some papers in connection with the checks? A. I don't recall that I did.

Q. You didn't complain about them? A. No.

[6352] Q. Then you came to New York, or did you write some letters first? What happened first? A. It seems as though there was an exchange of letters.

Q. Have you got those letters? A. I believe so.

Q. Can we see them?

Mr. Rifkind: Are they marked?

Mr. Costikyan: I believe they are marked.

Mr. Lane: You have everything that we have.

Q. Are those the letters you referred to, in which you offered him the opportunity to buy some oil leases and things of that kind? A. Yes.

Q. Those are the letters? A. Yes.

Q. You finally got back to New York, did you? A. Yes.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

—10006—

Q. When did you get to New York? A. It's hard for me to give you exact dates, Judge.

Q. Was it a month or— A. We were back two or three times.

Q. Was it a month? A. I think there was an interval of a month or two.

Q. And was your object in coming to New York to see the Cities Service people, or did you have other business here? A. We had other business.

Q. And you came with Nelson together, or did you come alone? A. As I recall, I was alone.

Q. And whom did you call on at Cities Service? A. Mr. Lowe.

Q. And I suppose it was by telephone engagement? A. Yes. I believe so.

Q. Did you have any trouble arranging a date to see Mr. Lowe? A. No, sir.

Q. You found his door open to you? A. Yes.

Q. And did you have a conversation? A. Yes.

—10007—

[6353] Q. What did you say and what did he say? A. In substance, we wanted to——

Q. What did you say? A. In substance, I asked Mr. Lowe about the purchase of various things that Cities Service was using, such as chemicals, and one thing and another.

Q. What did he say about that? Go ahead. I did not mean to interrupt you. Elaborate on that if you want to. You wanted to know whether you could be the broker in arranging for the purchase of them by Cities Service? A. Yes, sir.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. Did you give him a list of things? A. Chemicals in general.

Q. This was oral conversation? A. Yes. We wanted to know if they had any interest in doing business through us.

Q. What did he say? A. I received no encouragement.

Q. Did he say that they had their sources of supply well established? A. He said they had sources of supply well established and there was actually no reason for changing.

—10007a—

Q. Had you closed any deals with him pursuant to the correspondence you have told us about a minute ago? A. No.

Q. Did you ask about those? A. I don't recall.

—10008—

Q. Had those projects been rejected by Cities Service in correspondence with you? A. Yes.

Q. So that by the time you saw Lowe on this occasion those things were not pending any longer? A. Yes.

Q. You agree with me? A. Yes.

Q. You got no encouragement from him about this or other products that you offered to furnish to Cities Service. Was there another conversation with Mr. Lowe on that occasion? A. Not that I recall.

[6354] Q. By that time had you already received the second installment on your payment? A. I believe so.

Q. What did it turn out to be? A. As I recall it was something less than $9500.

Q. In the aggregate? A. Both to Mr. Nelson and me.

Q. Both of you each received about $9500? A. Approximately.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. Who brought out the second payment? A. As I re-

—10009—

call they were mailed to us.

Q. By whom? A. By Mr. Carter.

Q. Whose check was it? A. Mr. Carter's check.

Q. Were there any other receipts to be signed in connection with that check? A. Not that I recall.

Q. The original receipt covered the entire payment? A. I believe so.

Q. Did you say anything about those checks to Mr. Lowe? A. I don't recall.

Q. Do you think you did? A. I don't believe so.

Q. Did you go around to see Mr. Watson? A. No.

Q. Did you check with Mr. Watson over the telephone or otherwise as to the correctness of the payment you received? A. Not after the first time.

Q. Did you get confirmation on the first time? A. No.

—10010—

Q. Did you ever seek confirmation? A. No, sir.

Q. And you never inquired about it since? A. No, sir.

Q. Was anything further said by you and Lowe on the occasion of the visit you just described? A. Not that I recall now.

Q. Did you go about transacting some other business in Europe while you were there? A. Yes, sir.

Q. Did it relate to Iranian oil? We are now some time in the late spring of 1953, aren't we? Or is it later than that? A. 1954.

[6355] Q. No, we are now in the late spring of 1953 according to what you have been telling me. You said a couple of months after Carter's visit to Denver. A. I believe there was a visit after Carter's visit to Denver that

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

year but I am speaking of another visit in 1954.

Q. This conversation that you speak of took place in 1954? A. I believe the last one did.

—10011—

Q. Had you had a visit with Lowe or was it in 1953 after your conversation with Carter; the same year in which Carter delivered those two checks to you? Did you have a visit with anybody in Cities Service in New York? A. Not other than Mr. Lowe.

Q. Did you have one with Mr. Lowe? A. I beileve so.

Q. When? A. I can't give you the date.

Q. Some months after Carter's visit? A. I believe so.

Q. When? A. I can't give you the date.

Q. What was the subject matter of the conversations you had with Lowe at that time? A. Just what I told you.

Q. I thought this was a 1954 conversation you were telling me about. A. 1953 and 1954 I saw him twice as I recall and the same thing.

Q. Talked about the same thing both times? A. Yes.

Q. Wasn't it getting boring? A. Well, we were trying

—10012—

to sell Cities Service various products. It wasn't boring to us, we were trying to make some money.

Q. Was it the same set of products that you were offering to furnish in 1954 that you furnished in 1953? A. I believe in 1953 we had offered some flexible hose and oil leases and one thing or another. I believe our second phase of efforts concerned chemicals.

Q. So you had one visit in 1953 and another one in 1954? A. That is the best of my recollection.

[6356] Q. Is it that you had only one visit in 1954? A. That is the best of my recollection.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. You didn't see Watson on this 1954 visit, did you? A. No, sir.

Q. Only Lowe? A. Yes, sir.

Q. None of the other Cities Service personnel? A. No, sir.

Q. Was there still a cordial greeting? A. Yes, sir.

—10013—

Q. Did you leave the office at Cities Service and go back to Denver? A. Yes, sir.

Q. When is the next time you saw anybody at Cities Service? A. I believe that was the last time.

Q. You never saw them again? A. Not that I recall now.

Q. 1955, 1956, 1957, you never had any further contact? A. Not that I recall now.

Q. Any correspondence? A. I don't believe so.

Q. Any telephone calls? A. No.

Q. Telegrams? A. Not that I recall.

Q. Anybody from Cities Service pass through Denver and look you up? A. No.

Q. Not since the spring of 1954? A. That is the best of my recollection, Judge. I think the date is fairly accurate.

Q. You never offered them any other materials or to

—10014—

furnish them any other materials after that spring conference with Lowe in 1954? A. I don't believe so.

Q. When did you first find out about the Gulf oil transaction, relating to Kuwait oil? A. I believe that was in 1954.

Q. After you read it in the paper, didn't you? A. Yes, sir.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. After you read that piece in the paper did you call up Lowe and say, "What is the meaning of this?" A. No, sir.

[6357] Q. Did you write him a letter? A. No.

Q. Did you call Watson? A. No.

Q. Call anybody at Cities Service? A. No.

Q. Whom did you call? A. I don't understand your question.

Q. Did you call Nelson? A. We were in daily contact.

Q. Did you discuss it with Nelson? A. Yes.

—10015—

Q. How about Bentley, did you call Bentley about it? A. I don't believe so.

Q. Or Zoes? A. No.

Q. Carter? A. No.

Q. When did the cordiality which you had expressed to Cities Service curdle into hostility? A. Looking back, Judge, it occurred to me——

Q. When? A. After we heard about the transaction with Gulf.

Q. It was some time after that? A. Yes, sir.

Q. At that time you had the feeling that they had made a deal with Gulf and that was in some way out of keeping with the arrangements with you? A. Yes, sir.

Q. That was your thought? A. Yes, sir.

Q. Did you form a notion they were violating any of your rights under the antitrust law? A. I am not a lawyer, Judge.

—10016—

Q. I am asking whether that notion ran through your mind. A. All I remember is that I read of this announcement that Cities Service had done a tremendous deal with 90 million barrels of oil in Kuwait through Gulf and it was

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

announced the transaction had been kept secret for a long time and it was announced at a rather late date and looking back it appeared the transaction had been completed shortly after Mr. Jones' trip to Iran.

[6358] Q. You came to the conclusion that was a substitute for the Iranian oil? A. Yes, sir.

Q. Did you then or later come to the conclusion that he was offered this deal in order to divert him from the Iranian transaction? A. Yes.

Q. You still believe so? A. Yes.

Q. You believe Gulf offered him the opportunity to get oil from Kuwait in order to induce him to abandon his efforts in Iran? A. Precisely.

—10017—

Q. You formed the opinion that the oil he got in the Kuwait contract served the purposes that otherwise would have been served with Iranian oil? A. Yes, sir.

Q. You still believe so? A. Yes.

Q. If you had not so thought that would not have included Cities Service as a defendant in that case? A. That is right.

Q. And you still think so? A. Yes, sir. An additional answer to the last question, Judge. The fact that they accepted the contract with Gulf and finally ended up in the Consortium, that is part of my thinking, too.

Q. When did you find out about the Consortium? A. When it was announced.

Q. Before or after you heard about the Kuwait contract? A. Afterwards.

Q. How much afterwards? A. I would say a year or so.

Excerpts from Deposition of Gerald B. Waldron, October 26-28, 1959

Q. During that year was your mind in a state of sus-

—10018—

pense about Cities Service? A. No.

Q. So even before you heard about the Consortium you already formed the opinions that you indicated? A. That is right.

* * *

Cities' Motion for Summary Judgment, April 8, 1960

[11189] UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that the within motion will be brought on for hearing before Judge William B. Herlands at the United States Court House, Foley Square, New York, N. Y., in the Courtroom assigned to Judge Herlands, on April 25, 1960, at 10:30 A. M., or at such other time and place as he may fix for the said hearing.

Dated: New York, New York
April 8, 1960.

Yours, etc.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendant
Cities Service Co.
Office and P. O. Address
575 Madison Avenue
New York 22, N. Y.

To:

CASEY, LANE & MITTENDORF, Esqs.
Attorneys for Plaintiff
26 Broadway
New York 4, N. Y.

Cities' Motion for Summary Judgment, April 8, 1960

[11190] UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant Cities Service Co. moves this Court for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for a summary judgment in its favor dismissing plaintiff's complaint as against it, on the ground that there is no genuine issue as to any material fact and that Cities Service Co. is entitled to a judgment as a matter of law, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
April 8, 1960.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendant
Cities Service Co.
Office and P. O. Address
575 Madison Avenue
New York 22, N. Y.

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

[11191] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

GEORGE H. HILL, JR., being duly sworn, deposes and says:

1. I am a Senior Vice President in charge of Foreign Operations of Cities Service Company (hereinafter "Cities Service"), one of the above defendants, and I am familiar with the facts of the within action.

2. I make this affidavit in support of the motion by Cities Service, made pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment dismissing the complaint as against Cities Service.

PLAINTIFF'S CHARGES AGAINST CITIES SERVICE

3. This is an action for treble damages, in the amount of $109,260,000, based upon alleged violations of the Sherman Act and related anti-trust statutes.

4. Cities Service has been named a defendant in this action despite these uncontradicted or undeniable facts:

[11192] (a) The great bulk of the allegations of the complaint are expressly stated, in the complaint, not to be addressed to Cities Service;

(b) The plaintiff has admitted, on his deposition, in so many words, that he has neither written nor oral evidence to support the few allegations which do encompass Cities Service and that he made these allegations on the basis of a guess; and

(c) Documentary evidence conclusively establishes that plaintiff's guess is contrary to fact.

5. For these reasons, Cities Service believes that it is entitled to a summary judgment in its favor and seeks to be relieved of the burden of remaining a party to this expensive and time-consuming lawsuit, which has been pending for some four years already, and which seems to be possessed of considerable longevity.

THE COMPLAINT

a. *The major alleged conspiracy*

6. The complaint alleges a worldwide conspiracy by the defendants, *other than Cities Service,* to control the sources of oil in Europe and the Middle East.

7. Pursuant to this alleged conspiracy, the defendants, *other than Cities Service,* are charged with having entered into agreements, as early as 1927 and 1928, dividing overseas markets for oil, fixing foreign prices for oil, controlling available tanker facilities, and excluding unaffiliated companies from the opportunity to engage in the production and refining of oil abroad (complaint, paragraphs 8, 9 and 10).

8. The conspiracy charged in the complaint is, ac- [11193] cording to the complaint, the same as that alleged

in an action entitled *United States* v. *Standard Oil Company (New Jersey)*, et al., Civil Docket No. 86527, now pending in this Court (complaint, paragraph 9, page 7). Cities Service is neither a party to that action, nor is it mentioned in the complaint therein.

9. Nevertheless, in this case, Cities Service is claimed by plaintiff to have become a member of the conspiracy alleged by the Government by reason of the following alleged events relating to Iranian oil:

(a) In May of 1951, the Government of Iran nationalized the oil properties in Iran formerly owned by the Anglo-Iranian Oil Co., Ltd. (hereinafter "Anglo-Iranian"), now known as British Petroleum Co., Ltd. (complaint, paragraph 10(i));

(b) In consequence of such nationalization, the defendants, *other than Cities Service,* instituted a boycott of Iranian oil, for the purpose of forcing "the Iranian Government to return its oil concessions, if not to Anglo-Iranian in whole, at least to the defendants jointly, *excepting Cities Service* . . ." (complaint, paragraphs 10(i) (1)-(5), emphasis added);

(c) In May of 1952, plaintiff obtained a contract from the Iranian Government to sell 15,000,000 tons of Iranian crude oil in the United States (complaint, paragraph 10(i) (2));

(d) Thereupon, the defendants, *other than Cities Service* (complaint, paragraph 10(i)(4)) ". . . refused to purchase Iranian oil from plaintiff . . .", boycotted plaintiff

(paragraph 10(i)(4), ". . . caused normal and customary financial services . . ." to be denied to plaintiff (paragraph 10(i)(5)), interfered with his ability to get tankers, and frustrated plaintiff's ability to sell Iranian oil (complaint, paragraph 10(i)(3), (8));

[11194] (e) At the same time, Cities Service, which had no Middle East crude oil sources because the other defendants had allegedly excluded it by their alleged conspiracy, allegedly indicated to plaintiff a great interest in purchasing his entire supply and obtaining a managerial contract for all Iranian oil exploitation and production from the Iranian Government; "asked if plaintiff would be able to obtain an invitation from the Iranian Government . . . requesting that Cities Service inspect the Iranian oil installations for the purpose of determining whether they could be profitably reactivated . . ." accepted such an invitation from Dr. Mossadegh, the Prime Minister of Iran, obtained by plaintiff; sent an inspection party to Iran "on or about August 16, 1952"; and after full inspection "determined that the installations could be reactivated" (complaint, paragraph 10(i)(6));

(f) Cities Service then allegedly "proposed to the National Iranian Oil Company that . . . Cities Service would exploit and manage the Iranian oil resources . . ." (complaint, paragarph 10(i)(6));

(g) At that point, ". . . during late August or early September, 1952" Gulf Oil Corporation (hereinafter "Gulf") and Anglo-Iranian, allegedly "[l]earning of Cities Services's intention to force itself in this manner into the

Middle East oil complex", "conspired to and did offer Cities Service and Cities Service did accept a vast long-term supply of Kuwait oil at a price far below the posted International Gulf of Persia price, to wit: . . . at $1 per barrel, or the equivalent, approximately, of $7.40 per metric ton at a time when the posted price was approximately $12.89 per metric ton" (complaint, paragraph 10(i)(6));

(h) "At this time and by these acts Cities Service [allegedly] . . . entered into combination and conspiracy with the other defendants and . . . broke off further negotiations with plaintiff and the National Iranian Oil Company and [11195] refused to enter into any contract or arrangement with reference to Iranian petroleum" (complaint, paragraph 10(i)(6)); and

(i) As a further consequence of accepting the Kuwait offer in place of dealing with plaintiff, Cities Service was allegedly allowed by the other defendants to "purchase a participation" in the Consortium agreements which were entered into in 1954 by defendants, *other than Cities Service,* ". . . which agreements divided up substantially all of the Iranian oil production, thereby bringing to final and complete frustration plaintiff's efforts to market Iranian oil in free competition" (complaint, paragraph 10(i)(9)).

10. The plain meaning of these allegations is that Cities Service was "bought off" from doing business with plaintiff, but otherwise did not participate in the oil conspiracy; and that the alleged act of Cities Service in permitting itself to be "bought off" is the only act with which Cities Service is charged.

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

PLAINTIFF'S TESTIMONY BY DEPOSITION

11. That this is the plain meaning of the allegations of the complaint was confirmed by plaintiff on his deposition, Exhibit 1 annexed hereto, where he testified (transcript, pp. 6075-77, 6146):

"Q. Do you put them [Cities Service] into the conspiracy which you allege, which you say began in 1928? A. No, sir.

"Q. You don't put them into this conspiracy until a very much later date, isn't that right? A. That's correct.

"Q. And what is the later date that you pick as the date on which you said they joined this conspiracy of the other defendants? A. The latter part of 1952 or the first part of 1953.

"Q. And what is the event which you believe justifies you in saying that they joined this conspiracy? A. The event was when they made the arrangements with Gulf Oil Corporation to take oil from Kuwait.

[11196] "Q. It is that event which led you to believe that Cities Service joined the conspiracy? A. As well as their ending up in the International Oil Consortium in Iran.

"Q. That came later? A. Yes."

* * *

"Q. The event that you know of is the making of the contract with the Gulf Oil Company? A. Yes, sir.

"Q. And that is why you put Cities Service into this complaint as a defendant; is that right? A. That's one reason.

"Q. And the other reason is the Consortium? A. The Consortium. That's all the reasons that I know of at this time."

* * *

"Q. And of this morning you are telling me—and I assume truthfully—that the two events which you identify as causing you to name Cities Service as a defendant are the contract with Gulf and the entry into the Consortium? A. Yes, sir.

* * *

"Q. Isn't that a correct statement of affairs, that with respect to the entire conspiracy recited in subdivisions 8 and 9, down to Kuwait, down to the making of the Kuwait contract, you have no complaint with respect to Cities Service? A. In general, I would say that is correct, sir."

12. Except for the making of the Kuwait contract, and the eventual alleged participation by Cities Service in the Consortium, plaintiff candidly admitted that he had no other charges to make against Cities Service (transcript, pp. 6152-59). In response to a series of questions covering every allegation of the complaint, of which the following are typical, plaintiff testified in this manner (transcript, pp. 6152-53):

"Q. I would like to have you put your mind to the period following the making of that contract, and

to save time, all my questions will be related to the following: But for the making of the Kuwait contract and the reference to the Consortium—but for those two things. Think of that as a prefix to all the questions I am about to ask you for the next few minutes."

* * *

[11197] "But for those two events that have already been mentioned, have you any evidence to suggest that Cities Service was a party to a conspiracy or did any acts to further a conspiracy to divide foreign producing and marketing territories? A. I don't know.

"Mr. Lane: The question is, have you ever.

"A. (Continuing) No.

"Q. But for those two events, have you any evidence that Cities Service was party to a conspiracy or did any acts in furtherance of a conspiracy to maintain and correlate domestic and world prices of petroleum and products? A. The same answer.

"Q. No? A. Yes.

"Q. And but for these two events, have you any evidence to suggest that Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to control imports of petroleum and petroleum products into the United States? A. No."

13. Plaintiff's theory is thus clear. And it is wholly and totally wrong. For, the documentary evidence demolishes the assertion that the Kuwait contract was in any way re-

lated to Cities Service's interest in Iranian oil. It demolishes the assertion that the offer by Gulf to sell crude oil from Kuwait to Cities Service was in any way related to Cities Service's interest in Iranian oil. It demolishes the claim that Cities Service was allowed by defendants to purchase a participation in the Consortium. It demolishes the claim that Cities Service ultimately became a member of the Consortium.

THE KUWAIT CONTRACT: THE FIRST ALLEGED NEXUS OF THE ALLEGED CONSPIRACY

14. Plaintiff conceded on his deposition that he had ". . . neither written nor oral evidence that Anglo-Iranian and Gulf in fact conspired to make such an offer to Cities Service" (Exhibit 1, p. 6077); that he had no "writing or any oral proof that Anglo-Iranian and Gulf conspired to make such an offer . . . at any time" (Exhibit 1, pp. 6077-78); that he had, in fact, no "writing evidencing the assertion that . . . in August or September, 1952, an offer for Kuwait oil was made by Gulf to Cities Service" (Exhibit 1, p. 6078).

[11198] 15. Indeed, plaintiff conceded that the only basis for his belief that the Kuwait offer was made in "late August or early September, 1952" was

(a) a newspaper clipping which plaintiff read in 1954, which stated that a deal had earlier been consummated between Cities Service and Gulf for Kuwait oil (Exhibit 1, pp. 6078, 6081, 6283-84); and

(b) a statement made in plaintiff's presence in Iran in August or September, 1952, by the then President of Cities Service, Mr. W. Alton Jones, who allegedly stated that he had an offer on his desk in New York for oil from across the Gulf (presumably Kuwait) at a dollar a barrel (Exhibit 1, pp. 6078-79).

16. But even here, plaintiff admitted that he, plaintiff, was merely guessing that the offer had only recently been made (Exhibit 1, p. 6079). In fact, plaintiff apparently based his guess on the fact that Mr. Jones did *not* say when he had received the offer (Exhibit 1, p. 6079):

> "Q. Did Mr. Jones say in the statement to which you have referred when he had received that offer? A. No.
>
> "Q. What did you have to support the allegation of your complaint that the offer for oil from Gulf to Cities Service was made in August or September of 1952? A. It was the way Mr. Jones expressed it. He said, 'I understand there is an offer on my desk now in New York for oil from across the Gulf for a dollar a barrel.'
>
> "Q. I asked you a minute ago whether anything that Mr. Jones said led you to believe that the offer had just been made. A. It was the attitude with which he expressed the idea that an offer was on his desk in New York.
>
> "Q. And that was the basis of your conclusion? A. Yes, sir.
>
> "Q. You have no other basis than that? A. Not at this time."

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

[11199] 17. At another point in his testimony, plaintiff simply conceded: "I don't know when the offer was made" (Exhibit 1, p. 6082).

18. In contrast to plaintiff's unsupported guess, the documentary evidence is clear and overwhelming, and it shows plaintiff's guess to be wholly in error. Negotiations between Gulf and Cities Service for the purchase of Kuwait oil were initiated as early as 1948. The important terms of the present Kuwait contract were fully agreed upon long before Cities Service ever heard of or laid eyes upon plaintiff. Consequently, the Kuwait contract could have had no conceivable relation to Cities Service's dealings with plaintiff; and could not have been a "buy off" in any conceivable form.

19. Thus, the following documents establish beyond question that negotiations between Gulf and Cities Service for the purchase of Kuwait oil first began in late 1948; that the basic price and delivery features of the Kuwait contract were agreed upon by Cities Service and Gulf in early 1951, before Iran nationalized its oil industry; that the price formula was fully worked out between the parties by early 1952; that a draft of the Kuwait contract was approved by both parties in June of 1952; and that, on the very day that plaintiff met personnel from Cities Service for the first time (July 8, 1952, according to plaintiff, see Exhibit 1, p. 6187), the Operating Committee of Cities Service approved and recommended the acceptance by Cities Service of the proposed agreement, leaving only legal and mechanical details to be worked out:

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

Exhibit Number	Date of Document	Description of Document
2	August 12, 1948	Telegram from W. A. Sinsheimer (Cities Service) to R. M. Bartlett (Gulf), suggesting meeting to discuss "long-term" proposition for the purchase of Kuwait oil.
3	August 14, 1948	Letter from Mr. Bartlett (Gulf) to Mr. Sinsheimer (Cities Service) expressing interest in "long term proposition" regarding Kuwait crude oil.
4	November 4, 1949	Cities Service memorandum, setting forth proposal by Gulf to process 10,000 barrels a day of Kuwait crude oil for Cities Service at the Philadelphia refinery of Gulf.
5	February 3, 1951	Letter from Mr. Bartlett (Gulf) to Burl S. Watson (Cities Service) referring to telephone conversation in which Cities Service had stated it was still interested in obtaining processing by Gulf of approximately 20,000 barrels a day of Kuwait crude oil at the Gulf Philadelphia refinery.
6	April 26, 1951	Minutes of meeting between Cities Service and Gulf to discuss sale and processing of 20,000 barrels a day of Kuwait crude oil for Cities Service at Gulf's Philadelphia refinery. Cities Service agrees to such arrangement, provided a 25¢ per barrel discount on the value of oil products is obtained.
7	April 27, 1951	Four letters from Cities Service marine department to major shipyards in United States, requesting quotes on the construction of tankers (for the proposed Kuwait trade).
8	May 25, 1951	Memorandum from George H. Hill, Jr. (Cities Service) to Mr. Bartlett (Gulf) enclosing 4-page memorandum setting forth terms of proposed Kuwait contract. Memorandum concerns sale and processing by Gulf of an average of 20,000 barrels

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

Exhibit Number	Date of Document	Description of Document
		per day of Kuwait crude oil; oil to be imported by Cities Service and delivered to Gulf for processing at Gulf's Philadelphia refinery. Pricing terms use "(A+B)—(C+D+E)" formula appearing in final contract, with item "E" being the 25¢ per barrel discount guaranteed to Cities Service.
9	August 21, 1951	Letter from Mr. Watson (Cities Service) to Mr. Bartlett (Gulf) enclosing revised memorandum of the Kuwait agreement, and pointing out that at recent meeting with Gulf, substantial agreement was reached on all principles of the contract other than the tanker amortization provision.
10	October 5, 1951	Letter from Mr. Bartlett (Gulf) to Mr. Watson (Cities Service) enclosing revised memorandum of terms of Kuwait contract reflecting recent discussions with Cities Service, and expressing gratification that only "minor differences" remain to be ironed out. Memorandum enclosed contains terms substantially similar to Kuwait contract as finally signed.
11	November 10, 1951	Synopsis of proposed Kuwait contract, substantially similar to Kuwait contract as signed.
12	November 27, 1951	Letter from Mr. Hill (Cities Service) to Mr. Bartlett (Gulf), enclosing revised draft of agreement, stating that main difficulty remains the size of allowance for tankers to be constructed, and proposing seven-year amortization period, computed as though half the tankers were built in foreign yards, half in U. S. (draft omitted).
13	January 17, 1952	Letter from Mr. Bartlett (Gulf) to Mr. Watson (Cities Service) summarizing result of latest meetings, and stating that the major open item is agreement on maximum cost of tankers on 7-year pay-out basis. Several minor changes made, not affecting substance of agreement.

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

Exhibit Number	Date of Document	Description of Document
14	February 26, 1952	Synopsis of proposed contract, showing sole open item to be tanker construction costs (appendices omitted).
15	April 23, 1952	Letter from Mr. Bartlett (Gulf) to Mr. Watson (Cities Service), setting forth Gulf's definitive offer of sale and processing of 21,000 barrels a day of Kuwait crude, based on recent discussions with Cities Service officials. Offer is said to "closely follow" proposal made by Cities Service, and offer contains the finally-accepted provision on tanker construction costs, earlier in dispute.
16	May 23, 1952	Letter from Mr. Hill (Cities Service) to Mr. Bartlett (Gulf): your letter of April 23 "is substantially in line with our latest conversations and it should furnish a basis for final discussions". Changes suggested for purposes of simplification only, and "will not, I believe, affect your position in any way".
17	June 16, 1952	Draft of Kuwait agreement containing every major provision contained in final agreement, and lacking only full technical and legal phraseology, definitions, details on mechanics of contract, etc.
18	June 30, 1952	Letter from Mr. Bartlett (Gulf) to Mr. Hill (Cities Service): "While I have no doubt that our respective law departments will wish to make changes in language for purposes of clarification, etc., before the final agreement is ready for execution by our respective companies, nevertheless we feel your draft, subject to the necessary clarifications mentioned below, covers the important points resolved after various discussions." Letter points out that final contract will require a force majeure clause, an assignment clause, provisions for billing gauging, loading, etc. (exhibits omitted).
19	July 3, 1952	Synopsis of proposed contract, containing terms as finally agreed to.

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

Exhibit Number	Date of Document	Description of Document
20	July 8, 1952	Inter-office Cities Service memorandum from Mr. Watson to Mr. W. Alton Jones, summarizing proposed contract.
21	July 8, 1952	Statement of Operating Committee of Cities Service, unanimously recommending that Kuwait contract be approved.
22	July 23, 1952	Inter-office Cities Service memorandum from Mr. Hill to Mr. Watson, stating that discussions were in progress on loading problems affecting Kuwait contract.
23	August 12, 1952	Letter from Mr. Bartlett (Gulf) to Mr. Hill (Cities Service) enclosing draft Kuwait agreement (draft omitted).
24	October 2, 1952	Letter from Mr. Bartlett (Gulf) to Mr. Hill (Cities Service), enclosing revised drafts of agreement (drafts omitted).
25	October 7, 1952	Letter from Mr. Bartlett (Gulf) to Mr. Hill (Cities Service), enclosing revised versions of certain pages of proposed contract (revised pages omitted).
26	October 17, 1952	Letter from Mr. Hill (Cities Service) to Mr. Bartlett (Gulf), suggesting technical changes (memorandum omitted).
26a	November 13, 1952	Letter of Grand Bassa Tankers, Inc. (a wholly-owned subsidiary of Cities Service) to Newport News Shipbuilding and Dry Dock Company, accepting bid for the construction of four supertankers designed for the Kuwait trade.
27	December 16, 1952	Summary of proposed Kuwait contract.
28	January 26, 1953	The Agreement between Cities Service and Gulf for the sale and processing of Kuwait oil, containing the terms agreed to on April 23, 1952.

20. The above documents, I submit, conclusively establish that plaintiff's conjectures are wholly fallacious, and that there is no triable issue of fact relating to the Kuwait contract. They show that negotiations for the purchase of Kuwait oil commenced not in "late August or early September, 1952", but years earlier, and that agreement on all major provisions of the Kuwait contract was reached long before Cities Service had its first contact with plaintiff. They show, further, that long-term, multi-million dollar transactions such as the Kuwait contract are not conceived and concluded virtually overnight, as plaintiff apparently believes, but that many months are required even to draft the contract after agreement has been reached on its terms. In short, the documents establish a single, integrated course of negotiations culminating in a contract, which negotiations long antedated, and proceeded wholly independent of, plaintiff's relations with Cities Service.

THE SECOND ALLEGED NEXUS TO THE ALLEGED CONSPIRACY

21. The only other alleged connection between Cities Service and the alleged conspirators, according to plaintiff, is, in the words of the complaint: "As a further consequence of this conspiracy (the alleged Gulf-Anglo-Iranian-Kuwait conspiracy) Cities Service eventually gained a participation in the Consortium Agreements relating to the Iranian oil hereinafter described" (complaint, paragraph 10(i)(6), page 20) and "shortly after the signing of the initial Consortium Agreements Cities Service was permitted to purchase a participation in the Consortium" (complaint, paragraph 10(i)(9), page 21).

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

[11204] 22. Plaintiff conceded, however, that he had "nothing in writing" to support the allegation of his complaint that Cities Service was permitted to purchase a participation in the Consortium as a consequence of the alleged Kuwait transaction; and that nobody "on behalf of Cities Service" told him so; and that none of the defendants told him so; but that the allegation to that effect was an inference, drawn "from the fact that [he] believe[d] Cities Service was offered, was permitted to purchase a participation in the Consortium" (Exhibit 1, page 6085).

23. Again, the documentary evidence establishes that plaintiff is simply wrong: no defendant extended permission to Cities Service to "purchase a participation in the Consortium" (complaint, paragraph 10(i)(9)); indeed, Cities Service never did become a member of the Consortium!

24. The documents establishing these facts are annexed hereto as the following exhibits:

Exhibit 29 —Press release of the Department of State dated December 7, 1954, setting forth arrangements whereby additional American oil companies could apply for participation in the Iranian Oil Consortium, noting that Price Waterhouse & Company will ". . . determine whether any interested company possesses the responsibility to undertake the obligations required to be assumed in connection with the participation it seeks".

Exhibit 30 —Copies of letter dated December 15, 1954, to Mr. P. Rappaport of Price Waterhouse & Company from George H. Hill, Jr. (Cities Service) requesting a copy of the press release and other pertinent information concerning the Consortium.

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

Exhibit 31 —Letter dated December 15, 1954, from Price Waterhouse & Company to Mr. Hill furnishing the requested information.

Exhibit 32 —Enclosure to Price Waterhouse letter of December 15, 1954, including the press release by the State Department, general information, letter opinions of the Attorney General (press release omitted).

Exhibit 32a—Letter dated December 27, 1954, from Mr. Hill to Mr. Rappaport, requesting instructions and forms for application.

Exhibit 33 —Letter dated December 27, 1954, to Mr. Hill from Price Waterhouse specifying information required.

Exhibit 34 —Letter dated January 5, 1955, to Mr. Rappaport from Mr. Hill enclosing a number of items called for in letter of December 27 (items omitted).

Exhibit 35 —Letter dated January 14, 1955, from Mr. Hill to Mr. Rappaport enclosing additional information (additional information omitted).

Exhibit 36 —Letter dated January 19, 1955, from Price Waterhouse to Mr. Hill, acknowledging receipt of prior two letters and requesting that Cities Service specify the participation it desired.

Exhibit 37 —Copy of letter dated January 21, 1955, to Mr. Rappaport from Mr. Hill, completing furnishing of information and requesting the entire 5% participation.

Exhibit 38 —Letter dated February 10, 1955, from Price Waterhouse to Mr. Hill, stating that Price Waterhouse is "of the opinion that Cities Service Company is an established American oil company and that it has sufficient responsibility to participate in the Iranian Consortium to the extent of 5%".

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

Exhibit 39 —Copy of telegram dated March 4, 1955, from George V. Allen, Assistant Secretary of State, to B. S. Watson, President of Cities Service, stating that the Iranian government has accepted Cities Service as a member and inviting Cities Service to send representatives to a meeting of the State Department to discuss further procedures.

Exhibit 40 —Letter dated March 8, 1955, to Mr. Watson from Mr. Allen, confirming telegram of March 4, noting that Price Waterhouse had been "selected to determine whether any interested company possessed the responsibility . . ." to undertake the obligations set forth in the Consortium, and noting that ten other companies had likewise been approved both by Price Waterhouse and the Government of Iran (enclosures omitted).

Exhibit 41 —Letter dated March 10, 1955, to Mr. Watson from Willis C. Armstrong, Deputy Director, Office of International Trade and Resources of the State Department, listing persons who attended March 8 meeting.

Exhibit 42 —Copy of memorandum dated March 10, 1955, re Iranian Consortium prepared by George H. Hill, Jr. concerning meeting held at the State Department on March 8, 1955.

Exhibit 43 —Memorandum dated March 16, 1955, to the eligible applicants for interests in the Iranian Consortium from the five original participants.

Exhibit 44 —Telegram dated March 17, 1955, from the Department of State to Mr. Watson, stating that the Iranian government has accepted American Independent Oil Company as a member of the Consortium.

Exhibit 45 —Informal minutes of meeting of qualified applicants for the purchase of 5% interest in Iranian Consortium held at 2 p. m. on March 17, 1955.

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

Exhibit 46 —Series of telegrams, confirmations and letters to original members of Consortium from Atlantic Refining, Standard of Ohio, Signal Oil and Gas, Pacific Western Oil, Richfield, Anderson-Prichard, Hancock Oil and Tidewater Associated Oil Co., dated March 23, March 24, March 25 and March 26, concerning acceptance of 5% and method of allocating the available 5% among the twelve interested companies.

Exhibit 47 —Telegram dated March 23, 1955, from George H. Hill, Jr. to other eligible companies, calling a meeting for Monday, March 28.

Exhibit 48 —Telegram dated March 25, 1955, from George V. Allen, Assistant Secretary of State, to Mr. Hill, concerning distribution of 5% interest among eligible companies.

Exhibit 49 —Informal minutes of meeting of qualified applicants held March 28, 1955 at 11 a. m.

Exhibit 50 —Informal minutes of meeting of qualified applicants held on March 29, 1955 at 4 p. m.

Exhibit 51 —Copy of memorandum dated March 29, 1955, to Mr. Herbert Hoover, Jr., from the eligible companies requesting Mr. Hoover to determine the methods of allocation of 5% interest among the companies.

Exhibit 52 —Copy of Argument for Equal Participation addressed to Mr. Hoover, dated March 29, 1955.

Exhibit 53 —Copy of draft of Statement in Support of Proportionate Division (undated).

Exhibit 54 —Copy of letter dated March 30, 1955, to Mr. Hoover from the attorney for American Independent Oil Company.

Affidavit of George H. Hill, Jr., April 8, 1960, and Supporting Exhibits

Exhibit 55 —Copy of memorandum dated March 30, 1955, from Mr. Herbert Hoover, Jr., recommending equal participation.

Exhibit 56 —Informal minutes of meeting of qualified applicants held March 31, 1955 at 10:30 a. m.

Exhibit 57 —Telegram dated April 4, 1955, to Mr. Hill from Sinclair Oil Corp., advising Cities Service that Sinclair had withdrawn in favor of Richfield Oil Corporation, and that Richfield had accepted assignment of Sinclair's interest.

Exhibit 58 —Copy of telegram sent April 18, 1955, to other participants by Mr. Hill, advising that Cities Service had withdrawn in favor of Richfield. Cities Service owns a 31% interest in Richfield Oil Corporation, while another 31% interest in Richfield is owned by Sinclair Oil Corporation.

Exhibit 59 —Waiver of Interest and Assignment dated April 18, 1955 by Cities Service to Richfield Oil and Acceptance dated April 18, 1955, by Richfield Oil of Cities Services interest.

25. The foregoing documents overwhelm plaintiff's surmise about the alleged participation by Cities Service in the Iranian Consortium. They show that Cities Service never became a member of the Consortium; that it had, at best, only an opportunity to do so, of which it never availed itself, but instead transferred that opportunity to Richfield Oil Corporation. Moreover, the documents establish beyond question that Cities Service was not a participant in the Iranian Consortium; that nearly two years after the signing of the Kuwait contract it fought unsuccessfully in order to gain more than a minimal interest in the Consortium; and that failing to gain a more substantial interest, it elected not to participate.

CONCLUSION

26. Thus, the documentary evidence annexed to this affidavit, together with the admissions made by plaintiff in his complaint and testimony, show that there is no material issue of fact affecting Cities Service. Plaintiff made a hasty guess, and on the basis of that guess brought a lawsuit against Cities Service. The documentary evidence establishes plaintiff's guess to be wholly and undebatably false.

27. Yet, on the basis of this guess, plaintiff has involved Cities Service in a lawsuit of unusual magnitude. Pre-trial examinations have already consumed four years. Over seven thousand printed pages of testimony have been taken, and over one thousand exhibits marked. The litigation cost to Cities Service, in terms of money and time, has been enormous, and promises to be greater still.

28. I respectfully submit, and I am so advised, that Rule 56 of the Federal Rules of Civil Procedure was intended to relieve a defendant of the unfair burden of participating in a case of this magnitude where the plaintiff's allegations are so demonstrably lacking in foundation.

WHEREFORE, I respectfully request that the motion for summary judgment in favor of defendant Cities Service be granted.

(Sworn to by George H. Hill, Jr. on March 31st 1966.)

EXHIBIT 2, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

FAST TELEGRAM		PETROLEUM ADVISERS, INC. SIXTY WALL TOWER NEW YORK 5, N. Y.	711 LEAVE BLANK
DAY LETTER		TELEGRAM	CHARGE ACCOUNT Petroleum Advisers
NIGHT LETTER	X		SENT BY WAS
			STENOGRAPHER cnb
CHECK CLASS OF SERVICE DESIRED	X	BE BRIEF	

SEND THE FOLLOWING TELEGRAM TO

DATE ~~August 12, 1948~~

Mr. R. K. Bartlett, President
Gulf Oil Corporation
Gulf Building
Pittsburgh, Pennsylvania

Reference Kuwait Crude Offer:
Based on your quotations the basis on which boat will available for lifting two cargoes last quarter the delivered price to us at New York would be about the same shipping crude by tank car from West Texas to the Gulf and thence by Tanker. We are deeply appreciative of your offer and the time you gave us to work it out but everything considered it does not appear as though the short-term deal is interesting enough to attempt to close with you. Shortly after Labor Day hope to meet with you and begin discussions with you on long-term proposition. Regards

W. A. Sinsheimer

GEN. 9-43 RETAINED BY SENDER PRINTED IN U. S. A.

11209

EXHIBIT 3, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

PETROLEUM AND ITS PRODUCTS

GULF OIL CORPORATION

GULF BUILDING · PITTSBURGH 30, PA.

August 14, 1948

GULF REFINING COMPANY

Mr. W.A. Sinsheimer
Cities Service Oil Company
70 Pine Street
New York City

Dear Mr. Sinsheimer:

Thank you very much for your Western Union telegram of August 12, advising that you are not interested at this time in two cargoes of Kuwait crude on the basis of $1.75 a barrel f.o.b. Fahaheel, inasmuch as you feel it is about as cheap to ship West Texas crude by tank car to the Gulf, thence by tanker to your Refinery. If the situation should change, however, we shall greatly appreciate your getting in touch with us.

I was very much interested in your statement that you expect Mr. Burl Watson to get in touch with Mr. Swensrud shortly after Labor Day to discuss long-term proposition.

With kindest regards,

Sincerely yours
GULF OIL CORPORATION

R.M. Bartlett
Vice President

RMB:cr

11210

EXHIBIT 4, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

11/4/49

GULF'S PROPOSAL FOR SALE OF KUWAIT CRUDE TO CITIES SERVICE

1. Cities will purchase for period of ten years, starting December 1, 1949, cancellable at the end of any year on six months' written notice, 10,000 B/D Kuwait crude.

Cities will pay Gulf for the Kuwait crude purchased the going price for Kuwait crude, f.o.b. tanker Mena al Ahmadi, now $1.75 per barrel.

Gulf will charter tankers to Cities for transportation of Kuwait crude to Gulf's Philadelphia refinery. The charter rate for each tanker lifting of Kuwait crude will be determined so that the total cost to Cities of Kuwait crude delivered Gulf's Philadelphia refinery, including import duty, will be the same as the calculated cost of 34.0-34.9 Gravity Permian West Texas crude delivered Philadelphia. Rate for tanker transportation of Permian West Texas crude to Philadelphia shall be agreed on each year and shall be used for the succeeding 12 months' period.

2. Cities will import the Kuwait crude into the United States and pay the import duty.

3. Gulf will process the Kuwait crude purchased by Cities at its Philadelphia, Pennsylvania refinery for Cities' account at a processing charge of 80¢ per barrel, and will deliver into Cities certain equipment at Philadelphia refinery 33% Housebrand Gasoline and 22% Premium Gasoline, 5% Kerosene, 15% No. 2 Fuel Oil, and 20% residual fuel oil, provided Cities processes a like quahtity of 34.0-34.9 Gravity Permian West Texas crude for Gulf's account at its Lake Charles, Louisiana refinery at a processing charge of 80¢ per barrel and delivers to Gulf's certain equipment the same percentage quantities of products. Specifications for

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Exhibit 4, Annexed to Affidavit of George H. Hill, Jr.

products will be mutually agreed on.

Cost of tanker and barge loadings are included in the processing charge. Additional charges for loading into tank cars and tank trucks.

Gulf will deliver the West Texas Permian crude that Cities will process at Lake Charles, under Item 3, at no charge to Cities.

5. If the U. S. Government restricts the importation of Kuwait crude, Gulf agrees to sell Cities Permian West Texas crude, or some other suitable Western Hemisphere crude, properly equated in quality, to the amount of such curtailment. The processing agreement outlined in Item 3 above shall be reduced by an amount equal to the curtailment of import of Kuwait crude.

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EXHIBIT 5, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

PETROLEUM AND ITS PRODUCTS

GULF OIL CORPORATION

GULF BUILDING · PITTSBURGH 30, PA.

INCLUDING SUBSIDIARY
GULF REFINING COMPANY

February 3, 1951

Mr. Burl S. Watson, Vice President
Cities Service Company, Inc.,
Sixty Wall Street
New York 5, N. Y.

Dear Mr. Watson:

Referring to our telephone conversation of January 31 in which you stated you were still interested in our processing about 20,000 b/d Kuwait Crude at our Philadelphia refinery, it would be very helpful if you would give us the quantity and quality of the products you would require so that our Manufacturing Department can determine how close we can come to making them out of Kuwait Crude.

I was particularly interested to hear that you were pursuing the possibilities of expanding your refinery facilities but had more or less abandoned E. Braintree, Massachusetts, as a site, due to inability to utilize large tankers, and were now studying the economics of a fairly large-size refinery at Linden, N. J. where you are now operating a small asphalt plant. You stated you felt you could readily acquire additional property and inquired if we thought Gulf would be interested in a joint venture.

We greatly appreciate your giving us an opportunity to consider this and I will bring this matter to Mr. Svensrud's attention on his return to the office next week.

Sincerely yours,

RLBsmc

Vice President

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EXHIBIT 6, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

Kuwait Crude Meeting with Gulf Oil Corporation, April 26, 1951

Mr. R. Bartlett of the Gulf Oil Corporation and the writer discussed with Mr. Watson the general possibilities of Gulf and Cities Service entering into an agreement to import Kuwait crude and have it processed for Cities Service at the Philadelphia refinery of the Gulf Oil Corporation. Gulf are expanding their refinery at Philadelphia and believe that they could process crude for us for at least 25¢ per barrel cheaper than if we were to build a new East Coast refinery for a capacity of 20,000-25,000 daily barrels. They are willing to include 20,000 barrels additional capacity in their expansion program dedicated to Cities Service providing we, in turn, purchase from them and import Kuwait crude in order, of course, for Gulf to recapture their large investment in the Middle East crude fields.

Two apparent problems were discussed at some length, namely, the question of transporting the crude oil from the Middle East, and the spread Cities Service should receive between what Gulf charges us and the value of the products we receive from the crude oil processed. Mr. Watson suggested that for the purpose of transporting the crude oil a jointly-owned separate company be set up which would purchase the required number of tankers (six tankers for 20,000 barrels per day crude run at Philadelphia), and be permitted to charge at a sufficient rate to pay off the tanker investment in approximately 7-8 years, which investment Mr. Bartlett estimated would be $38,000,000. Mr. Bartlett further stated that in their studies a tanker rate of $1.00 per barrel would give a 7-8 year payout on the indicated $38,000,000 required investment. Incidentally, the investment stated was for United States built tankers and it was agreed that their operation would probably be under a foreign flag.

Mr. Bartlett agreed to discuss the transportation problem, as suggested by Mr. Watson, with Mr. Swensrud, but he was skeptical that such an arrangement would be possible. He personally did not have in mind Gulf furnishing any trans-

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Exhibit 6, Annexed to Affidavit of George H. Hill, Jr.

portation for Cities' crude oil even though the rate charged would give the indicated 7-8 year payout.

The yields from Kuwait crude suggested for our consideration were as follows:

Premium Gasoline	11.5%
Housebrand "	26.9%
No. 2 Fuel Oil	27.0%
No. 6 " "	33.3%

Figures prepared by Gulf indicate this yield would have a value of $3.54 per barrel based on the low of Platt's Oilgram for the Gulf Coast with transportation at 20% off the present maritime rate. The cost of the crude furnished by Gulf indicated a $1.60 per barrel at the well with a $1.00 transportation charge, and 18¢ duty, totalling $2.78, incidentally based on present West Texas of $2.42 per barrel. The difference between the value of the yield and the cost of the crude delivered to Philadelphia would be 76¢ using the above figures. The processing fee mentioned by Mr. Bartlett was 60¢, which leaves us a spread of only 16¢ per barrel. Mr. Watson indicated to Mr. Bartlett that a minimum of 25¢ per barrel between product value and crude and processing costs was essential for our finalizing any deal with the Gulf Oil Corporation.

The capacity of 20,000 daily barrels, as discussed, would not be available at the Gulf refinery in Philadelphia until some time probably the latter part of 1953. At that time Cities agreed that the 20,000-barrel figure would be in order but we had hoped to have Gulf process for us at least a part of this quantity beginning with the fall of 1951. Mr. Bartlett agreed to develop with his people the possibility of their processing 5,000 barrels per day of crude starting, at our suggestion, with August or September of this year, and either continuing until the large deal goes into effect, or terminating some time in March or April of 1952, using either Kuwait crude or possibly Gulf's Venezuela crude, recognizing, of course,

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Exhibit 6, Annexed to Affidavit of George H. Hill, Jr.

that from Gulf's standpoint the Kuwait crude would be much more preferable. Using the Kuwait crude, of course, would present very much more of a difficult transportation problem due to the time difference involved between the Middle East and Venezuela, and Cities was asked to develop the possibility of either furnishing our own transportation or of "swapping" transportation in some way to correct for this difference in time and, therefore, volume of crude handled per tanker.

The product specifications were briefly discussed and Mr. Bartlett pointed out that they probably could not meet our specifications and would obviously prefer our taking Gulf's specifications, due primarily to the problem of segregation in their refinery's lines and tankage. It was agreed that the writer would discuss this question with Mr. Barnes and it was not anticipated that any difficulty would arise from this particular question. It was further agreed that both Cities Service and Gulf Oil Corporation, in the event we proceed with the deal as outlined, would apply for a five-year amortization acceleration certificates for the investments involved.

In summary, Mr. Watson agreed that if the Gulf Oil Corporation would be willing to supply half of the tankers required for transporting 20,000 barrels per day of Kuwait crude to Philadelphia, obviously at such a rate to permit a 7-8 year payout, after which Cities would then be required to furnish their own transportation at Gulf's option and, further, if a minimum spread of 25¢ would be made between the product value and cost, he felt that the proposition as outlined would be acceptable to Cities Service. It was agreed that Mr. Bartlett would develop these points with Mr. Swensrud and that the writer would discuss and agree with Mr. Barnes on the operational data involved, after which it would be in order to proceed with a written contractual obligation, providing a mutually agreeable understanding is reached.

As an alternate to the processing arrangement discussed above, Mr. Watson asked Mr. Bartlett to develop the possibility of Cities Service buying into the Gulf-owned Kuwait reserves, which Mr. Bartlett estimated approximates 10,000,000,000 barrels. Mr. Watson stated we would probably be interested in about 10% of this figur

11216

G. L. Mateer

EXHIBIT 7, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

April 27, 1951

3 120

Sun Shipbuilding and
Drydock Company
Chester, Pennsylvania

Dear Sirs

We are in the market to have built for us two tank steamers between 28 and 32,000 tons, dead-weight, and would like to discuss this matter with your representative at your early convenience.

Very truly yours,

C.S.
s

11217

Exhibit 7, Annexed to Affidavit of George H. Hill, Jr.

3:21

April 27, 1951

Bethlehem Steel Company
Shipbuilding Division
25 Broadway
New York, New York

Dear Sir:

We are in the market to have built for us two tank steamers between 28 and 32,000 tons, dead-weight, and would like to discuss this matter with your representative at your early convenience.

Very truly yours,

C.B.
s

11218

Exhibit 7, Annexed to Affidavit of George H. Hill, Jr.

April 27, 1951

3.101

New York Shipbuilding Corp.
420 Lexington Avenue
New York, New York

Dear Sirs

We are in the market to have built for us two tank steamers between 28 and 32,000 tons, dead-weight, and would like to discuss this matter with your representative at your early convenience.

Very truly yours,

C.S.
s

112-19

Exhibit 7, Annexed to Affidavit of George H. Hill, Jr.

April 27, 1951

3101

New Port News Shipbuilding &
Drydock Company
90 Broad Street
New York, New York

Dear Sirs

We are in the market to have built for us two tank steamers between 28 and 32,000 tons, deadweight, and would like to discuss this matter with your representative at your early convenience.

Very truly yours,

C.S.
s

11220

EXHIBIT 8, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

CITIES SERVICE

May 25, 1951

From the Desk of
GEO. H. HILL, JR.

TO Mr. R. H. Bartlett

Attached is memorandum re purchase of Kuwait crude. After you have had an opportunity to read it, suggest you call either Watson or me.

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Exhibit 8, Annexed to Affidavit of George H. Hill, Jr.

MEMORANDUM

RE: Proposed purchase 20,000 b/d Kuwait crude from Gulf Oil Corporation

May 25, 1951

Cities Service desires to purchase from Gulf and Gulf desires to sell to Cities Service an average of 20,000 bbls. of Kuwait crude oil per calendar day. The transaction if consummated will contemplate that Cities Service will take title to the crude F.O.B. Persian Gulf and will transport it to Gulf's refinery at Philadelphia; that Gulf will process the crude for the account of Cities Service and will deliver to Cities Service at Gulf's Philadelphia refinery the products derived therefrom. The purpose of this memorandum is to summarize the discussions thus far and possibly to serve as a basis for definitive contracts.

1. It has been estimated that 6 tankers of from 27,000 to 30,000 dead weight tons each will be required to transport the crude purchased. Cities Service will construct, purchase and/or charter these boats and devote them exclusively to this service. The boats will be under foreign flag and may be built either in the United States or abroad as may be desired by Cities Service.

2. The mechanics for furnishing such boats have not been finally determined. It has been suggested that a company be formed owned jointly (50% each) by Cities Service and Gulf. This company would own the stock of two subsidiaries, one of which would be under general supervision of Gulf, the other under the supervision of Cities Service. Each of the subsidiaries would own or

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Exhibit 8, Annexed to Affidavit of George H. Hill, Jr.

charter 6 tankers of the type described above. In this manner neither Cities Service nor Gulf would own controlling interest in the tanker operation and debts of the subsidiaries would not have to appear on the consolidated balance sheets of the companies but could be handled through a footnote. This point will require further study by Cities Service, however, it is understood that Gulf is not particularly concerned whether Cities Service decides on a joint company as described or furnishes its 6 boats through a subsidiary owned entirely by Cities Service.

3. Deliveries of the crude would begin as soon as any of the Cities Service boats are placed in operation and would be increased as more of the tankers become available until an average of 20,000 b/d is being delivered.

4. Crude will be imported by and duty thereon paid by Cities Service, and will be delivered to Gulf's refinery at Philadelphia where it will be processed by Gulf for account of Cities Service. Yields will be agreed upon between the parties but Gulf agrees that such yields shall at least equal Gulf's average at the refinery.

5. Specifications for the products shall be agreed upon between the parties and included in final contract.

Exhibit 8, Annexed to Affidavit of George H. Hill, Jr.

6. Cities Service shall pay to Gulf for the crude delivered and the processing thereof the following:

A + B - C - D - E times Barrels of Products Delivered

In the foregoing formula:

A = An amount per barrel of product delivered to Cities Service at Gulf's Philadelphia refinery equal to Platt's low for such product on the Gulf Coast on the day of delivery to Cities Service.

B = 80% of the U. S. Maritime rate for transportation by tanker of such product from the Gulf Coast to Philadelphia in effect on the date of delivery.

C = An amount per barrel to be agreed upon by the parties and to be recomputed each six months of this contract, which amount shall be calculated to equal at the end of this contract the total cost of the tankers supplied by Cities Service plus all operating costs, plus costs of insurance, plus interest on the money invested in such tankers at the rate of 4% per annum. Cities Service will agree that the tanker operating costs shall not exceed the average cost Gulf incurs in operating its own foreign flag tankers of similar size in similar service.

D = The amount of duty paid per barrel by Cities Service on the importation of the crude oil.

Exhibit 8, Annexed to Affidavit of George H. Hill, Jr.

E = 25 cents per barrel.

7. The agreement between the parties shall terminate 7 years from the date the last of the 6 tankers furnished by Cities Service under Paragraph 1 above is put into service.

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EXHIBIT 9, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

August 21, 1951

Mr. R. M. Bartlett, Vice President
Gulf Oil Corporation
Gulf Building
Pittsburgh 30, Pennsylvania

Dear Mr. Bartlett:

There is enclosed a revision of the memorandum previously sent you in connection with the proposed purchase by Cities Service of Kuwait crude oil. The only change of any substance in the memorandum is contained in paragraph 6.

You will recall that at our last conference which was attended by Mr. Svensrud, we seemed to be in substantial agreement on the principles of the proposed contract with the exception that Mr. Svensrud felt the 7 year amortization period was all right with your people for foreign built ships, but was too short for those built in this country.

Since our talk we have made additional investigations of the condition of foreign shipyards and it seems almost certain that if we are to secure boats within the next four or five years, we must have them built in this country. Of course, there is considerable advantage to both Gulf and ourselves to get the proposed program under way as soon as possible. In fact we do not feel our Company would be interested in the transaction if we are required to wait four or five years before deliveries can begin.

We do believe, however, that a 7 year amortization of capital costs in a proposition of this kind is reasonable and is as far as we would like to go. Nevertheless, in order to attempt to meet Mr. Svensrud's objection to some extent, and to more or less split the difference, we have had a computation made using three American and three foreign built ships. The $1.30 figure contained in paragraph 6 of the attached is based on this computation plus operating expenses furnished us by you plus interest on the investment.

In addition we have provided in paragraph 7 for a possible extension of the term of the contract beyond the 7 year period. During any extension the depreciation or amortization charge would be reduced to a rate based on a 20 year life for the tankers.

It is our thought that we should wind up our negotiations on this as soon as possible in order to obtain as good position as possible in the shipyards.

Very truly yours,

B.S. Watson
cm

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Exhibit 9, Annexed to Affidavit of George H. Hill, Jr.

MEMORANDUM

RE: Proposed purchase 20,000 b/d Kuwait crude from Gulf Oil Corporation

August 21, 1951

Cities Service desires to purchase from Gulf and Gulf desires to sell to Cities Service an average of 20,000 bbls. of Kuwait crude oil per calendar day. The transaction if consummated will contemplate that Cities Service will take title to the crude F. O. B. Persian Gulf and will transport it to Gulf's refinery at Philadelphia; that Gulf will process the crude for the account of Cities Service and will deliver to Cities Service at Gulf's Philadelphia refinery the products derived therefrom. The purpose of this memorandum is to summarize the discussions thus far and possibly to serve as a basis for definitive contracts.

1. It has been estimated that 6 tankers of from 27,000 to 30,000 dead weight tons each will be required to transport the crude purchased. Cities Service will construct, purchase and/or charter these boats and devote them exclusively to this service. The boats will be under foreign flag and may be built either in the United States or abroad as may be desired by Cities Service.

2. It is understood that if Cities Service desires, Gulf is willing to enter into an arrangement under which a corporation will be formed owned jointly (50% each) by Cities Service and Gulf, which corporation in turn would own the stock of two subsidiaries, each of which would own or charter 6 tankers of

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Exhibit 9, Annexed to Affidavit of George H. Hill, Jr.

the type above described. One such subsidiary would be under the general supervision of Gulf, the other under the supervision of Cities Service. It is immaterial to Gulf whether this mechanism is used, or whether Cities Service furnishes its transportation in some other manner.

3. Deliveries of the crude would begin as soon as any of the Cities Service boats are placed in operation and would be increased as more of the tankers become available until an average of 20,000 b/d is being delivered.

4. Crude will be imported by and duty thereon paid by Cities Service, and will be delivered to Gulf's refinery at Philadelphia where it will be processed by Gulf for account of Cities Service. Yields will be agreed on between the parties but Gulf agrees that such yields shall at least equal Gulf's average at the refinery.

5. Specifications for the products shall be agreed upon between the parties and included in final contract.

6. Cities Service shall pay to Gulf for the crude delivered and the processing thereof the following:

$$\frac{A + B - C - D - E \text{ times Barrels of products Delivered}}{}$$

In the foregoing formulas

A = An amount per barrel of product delivered to Cities Service at Gulf's Philadelphia refinery equal to Platt's low for such product on the Gulf

Exhibit 9, Annexed to Affidavit of George H. Hill, Jr.

Coast on the day of delivery to Cities Service.

B = 80% of the U. S. Maritime rate for transportation by tanker of such product from the Gulf Coast to Philadelphia in effect on the date of delivery.

C = An amount per barrel to be computed each three months of this contract. As of the date of this memorandum such amount is determined to be $1.30 per barrel. This amount is based in part on Gulf's present operating expenses (excluding depreciation and interest) for its own foreign flag tankers of similar size in similar service. A breakdown of such operating expenses is attached hereto as Exhibit "A". Gulf will furnish Cities Service with a similar breakdown of operating expenses at the time the first tanker supplied by Cities Service under this agreement is placed in service, and thereafter each three months. The $1.30 per barrel hereinafter referred to shall be adjusted up or down at the time the first Cities Service tanker goes into service and thereafter each three months of the contract, based upon Gulf's operating expenses as shown by said breakdown.

D = The amount of duty paid per barrel by Cities Service on the importation of the crude oil.

E = 25 cents per barrel.

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Exhibit 9, Annexed to Affidavit of George H. Hill, Jr.

7. The agreement between the parties shall terminate 7 years from the date the last of the 6 tankers furnished by Cities Service under Paragraph 1 above is put into service. In the event the parties agree to continue the arrangements provided for in the contract for a period beyond its expiration date, all provisions of the contract will continue except that the amount represented by "C" in the formula included in paragraph 6 above shall be adjusted to equal the sum of the following:

(a) Gulf's operating costs (exclusive of depreciation and interest) for tankers of similar size in similar service as shown by breakdowns of expenses furnished to Cities Service each three months.

(b) Depreciation of Cities Service investment in its tankers at the rate of 5% per annum.

(c) Interest on Cities Service investment in such tankers at the rate of 4% per annum.

8. It is recognized that the amount represented by "C" in the formula included in paragraph 6 is based on present estimated cost of construction of super tankers both in this country and abroad, and if such construction costs materially increase prior to signing a formal contract between the parties this amount will have to be adjusted accordingly.

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Exhibit 9, Annexed to Affidavit of George H. Hill, Jr.

[illegible]
GULF OIL CORPORATION
COST OF TANKER TRANSPORTATION OF CRUDE OIL
[illegible]MONT TO PHILADELPHIA
PER BARREL

Wages	.0625
Food	.0165
Supplies and Expense	.0330
Hull and Machinery Insurance	.0623
P. & I. and Social	.0185
Cargo Insurance	.0095
Fuel	.2203
Port Charges	.0126
Canal Tolls	.1250
Maintenance	.0697
Overhead	.0382
Cargo Losses	.0135
Total	.6777

August 21, 1952

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EXHIBIT 10, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

PETROLEUM AND ITS PRODUCTS

GULF OIL CORPORATION

GULF BUILDING · PITTSBURGH 30, PA.

R. M. BARTLETT
VICE PRESIDENT

October 5, 1951

INCLUDING SUBSIDIARY
GULF REFINING COMPANY

Mr. B. S. Watson, Vice President
Cities Service Company, Inc.
60 Wall Street
New York 5, New York

PROPOSED BASIS, PROCESSING KUWAIT CRUDE, PHILADELPHIA

Dear Mr. Watson:

In line with my telephone conversation with you yesterday from Washington, I am attaching a revised draft of the above, dated October 3rd, which I believe clarifies some of the points raised during my meeting with you and Mr. Hill in your office Thursday, September 27th, when we went over our draft dated September 24 which I left with you.

You stated that your people were going over this matter very carefully and hoped to be in position to discuss this with us possibly sometime next week. I was glad to hear you say that you agreed for the most part with our write-up and that there were only a few minor differences which you thought could be ironed out during our next meeting.

We wish to call your attention to the last statement attached to the draft, showing the method of arriving at the fixed cost of transportation from Kuwait to Philadelphia in United States, French and British built tankers, operating under the Liberian flag, and based on paying out the tanker investment in seven years.

With kindest regards.

Sincerely yours,

R. M. Bartlett

Vice President

RMB:mar
Attach.

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Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

10/3/51

Gulf's Draft

CITIES SERVICE OIL COMPANY, INC.

Basis for Sale of Kuwait Crude Oil to Cities with Processing in Gulf's Philadelphia Refinery

1. Gulf agrees to sell to Cities, and Cities agrees to purchase from Gulf, 20,000 B/D (five per cent, more or less) of Kuwait crude oil, deliverable F.O.B. Kuwait in tankers to be supplied by Cities at approximately equal intervals during the period beginning about July 1, 1953 (when Gulf's new Philadelphia Refinery units, in which said oil will be processed, are expected to be completed) and terminating on ~~December 31, 1961.~~ June 30, 1963. It is estimated that five tankers of from 28,000 to 30,000 DWT each will be required to transport this oil and Cities agrees to use its best efforts to acquire or charter these vessels by July 1, 1953, and devote them exclusively to this service. It is understood that if Cities does not so acquire or charter a sufficient number of tankers to transport 20,000 barrels of oil daily by the time Gulf's new Philadelphia Refinery units are completed, or if, at any time thereafter during the term of this agreement, Cities does not have sufficient tanker transportation available for such purpose, then, during such period ~~(and without relieving Cities of its obligation to provide such transportation and lift the oil)~~ Gulf shall have the right to transport the oil for Cities' account and collect from Cities therefor the "variable cost" plus the "fixed cost" specified in subparagraphs (1) and (2) of paragraph C, Article 5, hereof.

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Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

2. Cities will transport and import the crude oil from Kuwait to Philadelphia and deliver it into Gulf's Philadelphia Refinery crude oil tanks.

3. Cities will not commence deliveries of Kuwait crude oil to Gulf's Philadelphia Refinery until Gulf notifies Cities in writing that Gulf is ready to start processing said oil for Cities. It is presently estimated that Gulf's new Philadelphia Refinery units will go on stream during the second quarter of 1953.

4. Gulf will process the Kuwait crude oil at its Philadelphia refinery and will deliver to Cities products, meeting Gulf's Philadelphia refinery manufacturing specifications, from each net barrel of Kuwait crude oil cleared through United States Customs by Cities, as follows:

Products	Vol. %	U.S. Gals. per Bbl. of Crude
Premium Gasoline	13.2	5.54
Housebrand Gasoline	31.3	13.15
Fuel Oil No. 2	22.1	9.28
No. 6 Fuel Oil	27.9	11.72
No. 6 Fuel Oil (gas equivalent)	5.5	2.31
Total products to Cities	100.0	42.00

Cities will arrange to deliver and Gulf will provide tankage to receive Kuwait crude oil in approximately equal monthly quantities. Likewise, Gulf will arrange to furnish and Cities will arrange to move the products in reasonably equal monthly quantities as they accrue.

Upon giving Gulf six months' notice in writing, Cities will have the right to exchange up to twenty-five per cent of one product for other

Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

products listed above. A monetary adjustment will be made for the difference in the value of the products taken by Cities as compared to those to which it would otherwise be entitled from the yields as set forth herein. Such monetary adjustment shall be made on the basis of the sum of the wholesale Gulf coast cargo prices (Factor A) and the calculated transportation costs to Philadelphia (Factor B) as described in Article 5 hereof and shown in exhibit "A" attached. When Cities has once elected to make such an exchange of products, it shall remain in effect for a period of not less than six months.

5. Cities will pay Gulf for the crude oil F.O.B. Kuwait and for the Philadelphia Refinery processing the amount per barrel determined as follows:

(A) Value on the United States Gulf Coast of the forty-two gallons of products stated above plus (B) the calculated cost of transportation by tanker from the United States Gulf Coast to Philadelphia minus the sum of (C) allowance for cost of transportation of crude oil from Kuwait to Philadelphia, (D) U.S. import duty paid by Cities on the net barrels of Kuwait oil cleared through U.S. customs, and (E) $0.25 per barrel of Kuwait oil delivered to Gulf at Philadelphia: The amount that Cities will pay Gulf will thus be calculated by the formula (A + B) - (C + D + E), and the factors A, B and C shall be determined as follows:

Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

A. The value on the Gulf Coast of the products delivered to Cities each month shall be determined at the end of such month by applying to the quantity of each such product the average for the month of Platt's low quotations for "Gulf Coast Cargoes Domestic and Export, All Ports" for the respective product nearest to the grade or quality of each of such products. For example, according to such quotations, such product prices for the month of August, 1951, were those shown in Exhibit "A" attached. Since these quotations are for cargo liftings of at least 20,000 barrels, it is understood that if Cities takes delivery at Philadelphia in barges, $0.05 per barrel of product (i. e. 0.1190¢ per gallon) will be added to the value, and if Cities takes delivery in tank cars or tank trucks, $0.10 per barrel (i. e. 0.2380¢ per gallon) will be added.

B. The calculated cost of transportation by tanker from the Gulf Coast to Philadelphia of the products which Gulf agrees to deliver to Cities at Philadelphia shall be determined on the assumption that such products would be transported in a 18,000 DWT, 15 knot, steam turbine driven products tanker constructed for coastwise service in a United States yard at a cost of $250 per DWT, that such vessel is operated with a normal crew paid at pre-

Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

vailing salary and wage rates, that insurance is carried on ship and cargo, that Bunker "C" fuel is procured at prevailing Gulf Coast market prices, that normal costs are incurred for food, supplies, and maintenance, that the ship is depreciated on a 20-year basis down to 2-1/2% salvage value; and that an interest cost is incurred of 3-1/2% per annum on one-half of said original investment cost. It is agreed between Cities and Gulf that until a new rate is established in the manner herein below provided, such calculated cost of transportation from the Gulf Coast to Philadelphia will be $2.5615 per ton, which is today's cost arrived at as set forth in Exhibit "B" attached. In the event that either party notifies the other in writing that in its opinion the cost of transportation from the Gulf Coast to Philadelphia determined as specified herein is either 10% more or 10% less than $2.5615 per ton, the two parties shall endeavor to agree on a new rate to be used based upon any changes that may have occurred in the operating expense items. If the parties are unable to agree as to whether a new rate is indicated and, if so, what rate, then each party shall designate one representative and these two representatives shall appoint a third party who shall act as chairman, and the three so selected shall determine the cost of transportation from the Gulf Coast to Philadelphia on the basis of the assumption and factors

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Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

set forth herein and the basis so determined shall be binding on both parties. It is understood that the new rate agreed upon is also subject to revision from time to time as outlined above if costs of transportation become 10% more or 10% less than the revised rate then in effect.

For calculation purposes, it is agreed that the following conversion factors will be used:

One ton equals 2,240 pounds,
One ton equals 8.7 barrels of Premium Gasoline, of 42 U.S. gals.
One ton equals 8.7 barrels of Housebrand Gasoline, " " "
One ton equals 7.5 barrels of Fuel Oil No. 2, " " "
One ton equals 6.5 barrels of No. 6 Fuel Oil, " " "

C. The transportation cost per barrel from Kuwait to Philadelphia shall be the "variable cost", plus the "fixed cost," as hereinbelow defined in subparagraphs 1 and 2, if the oil is transported in tankers owned by Cities or chartered from a subsidiary or affiliate of Cities; ~~but if it is transported in tankers chartered from others, such transportation cost shall be that specified below in subparagraph 3.~~

1. The variable cost per barrel shall be computed as of January 1 and July 1 during each year of the contract and shall remain in effect during the ensuring six-month period. Exhibit "C", attached, shows average variable cost for the first six months of 1951 incurred by Gulf or by its subsidiaries or

Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

affiliates. Such variable cost shall be equal to the average of such cost incurred by Gulf or by its subsidiaries or affiliates in the operation during the preceding six-month period of all foreign flag tankers of 28,000 to 32,000 DWT engaged in the Kuwait to Philadelphia crude oil service and reduced to a per barrel basis on the basis of deliveries made after making due allowance for incompleted voyages. Gulf and Cities agree that the list of operating expenses and the amounts shown for each as set forth in Exhibit "C", attached, constitutes a fair determination of such costs as of the present time. Gulf will furnish Cities with a similar breakdown of its operating expenses as of each January 1 and July 1 based on the preceding six-month periods, and the total of such revised operating expenses on a per barrel basis shall be used for the ensuing six months.

2. The fixed cost per barrel shall be determined as follows: For each tanker constructed by or for the account of Cities or for its use there shall be added, during the first seven years following the completion of construction and the putting into service of such tanker, per barrel of Kuwait crude oil hauled from Kuwait to Philadelphia and cleared through United States Customs by Cities. Such is deemed to cover depreciation, interest, and yield

Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

a reasonable return on the investment during each of such first seven years. When any tanker has completed seven years service under this contract, then this cost shall be reduced to an amount per barrel calculated to allow Cities a total of 7% per year on the actual total original cost of the vessel, such seven per cent being deemed to represent depreciation at 5% on the original cost and interest at 4% on 1/2 of said original investment cost.

3. In the event that Cities charters vessels for the transportation of Kuwait crude oil to Philadelphia from parties other than Cities subsidiaries or affiliates, then the amount allowed to Cities for transportation via such chartered vessels shall be ~~(1) the actual charter cost to Cities per barrel or (2)~~ the sum of the variable cost as defined in subparagraph 1 above plus ¢ per barrel, ~~whichever is the less.~~

6. If, at any time during the existence of this agreement, the application of the formula (A + B) - (C + D + E) provided in Article 5 hereof results in a payment to Gulf of less than $1.50 per barrel on the sum of factors A and B in said formula, is less than the posted well price for 35.0° - 35.9° West Texas (sour) crude oil (now $2.42 per barrel) plus $0.70 per barrel, Gulf shall have the right to cancel the agreement as to all future deliveries hereunder after 90 days' advance written notice to Cities, unless Cities, within 30 days of the receipt of such notice, notifies Gulf in writing that it will pay Gulf a sum sufficient to overcome the deficiency above-

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Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

mentioned.

7. Gulf shall have the right to substitute for Kuwait crude oil, in whole or in part, any other crude oil it may have available and as to such substituted crude shall have the right to change the loading port from Kuwait to any other port upon giving Cities three months' notice in writing of its desire to make such substitution. In such event Gulf shall bill Cities for such substituted crude oil at Gulf's prevailing price at the loading port and the quality and the quantity of the products delivered to Cities in Philadelphia as a result of this substitution, ~~billing provisions, etc.~~, will remain unchanged as though there had been no interruption in the delivery by Cities of Kuwait crude oil to Gulf's Philadelphia refinery. Should the crude oil substituted require additional transportation facilities or costs, Gulf shall be required to supply such additional transportation facilities and also compensate Cities for any additional transportation costs incurred by it as a result of such substitution. Contrariwise, should any savings result to Cities from the substitution Gulf shall be credited with such savings. Should the substitution result in any surplus transportation capacity on the part of Cities, Gulf would provide other cargoes for such vessels or charter same from Cities at rates not exceeding those provided for herein in Paragraph C of Article 5 hereof.

Gulf will render two billings to Cities as follows:

(1) Gulf will bill Cities at Gulf's prevailing price per barrel F.O.B. Kuwait or substitute loading port, if applicable, for each cargo of crude oil lifted by Cities when cable advice is received by Gulf stating the vessel name,

Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

loading port, loading date, gravity, and net barrels loaded.

(2) Gulf will bill Cities a second amount as soon as possible after the first of each month for the balance due computed pursuant to Article 5 hereof and based on the net quantity of crude oil cleared through United States Customs by Cities during the preceding month. The sum of the two billings will equal the total amount due Gulf calculated by Formula (A + B) - (C + D + E) as defined herein. All cargo losses en route to Philadelphia will be for Cities account.

9. Gulf shall have the right, by notifying Cities in writing on or before June 30, 1960, to extend this agreement under the same terms and conditions herein provided for a period to be specified in said notice of not less than 3 years nor more than 5 years beyond the termination date of December 31, 1961, and, upon the exercise of such right, this agreement shall be extended for the period so specified by Gulf; unless, within 30 days of the receipt of said notice, Cities notifies Gulf in writing that Cities plans to construct its own East Coast Refinery and desires to discontinue this crude oil purchasing and processing arrangement. In such event Cities shall give Gulf the first opportunity to supply for a period of not less than three years Kuwait crude oil or any other crude oil of equal or greater refining value to Cities which Gulf may elect to furnish so long as the delivered cost thereof to Cities shall be such as to constitute at least as favorable purchase by Cities as any other crude oil which it may be able or willing to purchase. In the event of disagreement as to any factors in the delivered cost or the refining value

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Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

to Cities any such difference of opinion will be resolved by referring such disagreement to a committee composed of one representative of each company and a third representative ~~member~~ selected by those two.

RMB:mar - 10/3/51

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Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

EXHIBIT "B"

	Annual Totals Gulf	Cities	Remarks
Wages	217,540	236,520	
Wage Adjustment	28,105	29,200	
Subsistence	26,280	36,500	Gulf's costs seem low.
Stores, Manning, Misc.	39,055	18,615	
Repairs & Maintenance	100,375	100,000	
Insurance - Hull	51,830	69,053)	Believe Gulf's figures
P. & I.	8,030	16,063)	are very low.
Overhead	65,700	41,975	
Fuel	245,000	184,412 @ $1.51 per bbl.	
Port Charges	39,810	47,700	
Depreciation	219,375	219,375	
Interest	78,750	78,750	
Cargo Insurance	4,405	4,589	
Evaporation Loss	31,447	32,780	
TOTAL	1,155,702	1,115,532	
Per Ton	2.5615	2.4725	

October 2, 1951

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Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

EXHIBIT "C-1"

	28,000 Tons D.W. Actual Gulf	Estimated Cities	Remarks
Wages	.0644	.0600	
Food	.0185	.0134	
Stores, Supplies, Manning, Misc.	.0363	.0206	
Repairs	.0644	.0698	
Insurance - Hull P. & I.	.0518) .0173)	.1003	We question the possibility of insuring at Gulf's figures.
Overhead	.0386	.0132	
Fuel	.2183	.2200	
Port	.0108	.0204	
Suez	.1188	.1226	
Cargo Insurance	.0081	.0079	
Evaporation Loss	.0122	.0050	
Sub-Total	.6595	.6532	

October 2, 1951

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Exhibit 10, Annexed to Affidavit of George H. Hill, Jr.

EXHIBIT "C-2"

3 American
2 Foreign
Built by
1953

Ship	16 knot Bethlehem 29,250 Ton American Built			
Cost of Ship @ $250 DWT	7,312,500		57% Depn	
Barrels/year	1,522,500			
Salvage Value 2½%	182,812	Per Bbl	Amt	Per Bbl
Value to Depreciate	7,129,688			
14.29% Annual Depreciation (a)	1,018,527	$.6690	$364,454	$.2341
Interest 4% (b)	146,250	.0961		
2% Return on Investment (c)	146,250	.0961		
	1,311,027	- Will not make this if we have loss time through accidents.		
Sum Per Barrel (a) (b) (c)	.8611	$.8611		
Allowance for Evaporation Loss	x 1.005			
	$ .8654			

6690
2341
4349

After Seven Years 7%	511,875	
Sum Per Barrel	.3362	
Allowance for Evaporation Loss	x 1.005	
	$ .3379	

October 2, 1951

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EXHIBIT 11, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

PROPOSAL FOR PURCHASE

OF

KUWAIT CRUDE FROM GULF

* * * * * * *

SYNOPSIS OF CONTRACT

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Exhibit 11, Annexed to Affidavit of George H. Hill, Jr.

MEMORANDUM

TO: Mr. B. S. Watson

November 10, 1951

I - Synopsis of proposed contract for purchase of Kuwait crude.

1. Cities will purchase from Gulf an average of 20,000 b/d of Kuwait crude.

2. Cities will provide transportation (5 super tankers-30,000 DWT each) for this amount of crude from Kuwait to Philadelphia.

3. Gulf will process crude for Cities' account at its Philadelphia refinery and deliver to Cities products equal to average yields at the refinery.

4. Cities will pay Gulf for the crude and the processing the following:

   (a) Platt's Gulf Coast low for the amount of products delivered, plus

   (b) Transportation cost from Gulf Coast to Philadelphia.

   From the sum of the foregoing there will be allowed Cities the following:

   (c) Operating cost for the Kuwait to Philadelphia tankers, such operating costs not to exceed Gulf's average operating costs for similar tankers.

   (d) An amount to be agreed upon between the parties for depreciation and interest (discussions have been based on a 7 year depreciation).

   (e) Duty paid by Cities on importation of crude.

   (f) 25¢ per barrel.

5. Floor on payment to Gulf. If at any time payment to Gulf for crude and processing is less than $1.50 per barrel or if Platt's low for products at Gulf Coast plus transportation to Philadelphia is less than posted well price for West Texas crude plus 70¢ per barrel, Gulf can cancel contract unless Cities makes up deficiency.

6. Cities to have option during the contract term to purchase additional crude up to 30,000 b/d, such additional crude to be processed elsewhere and Gulf to make an additional allowance to Cities for processing.

7. Contract will run 10 years from effective date, July 1, 1953.

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EXHIBIT 12, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

November 27, 1951

Mr. R. M. Bartlett, Vice President
Gulf Oil Corporation
Gulf Building
Pittsburgh, Pennsylvania

Re: Proposed Kuwait Crude Purchase

Dear Bob:

As I advised you by telephone last week, we are still checking tanker costs, etc. and are not yet ready to talk in terms of a definitive crude oil purchase contract.

However, we have again revised the draft of the proposed agreement, and I thought you might be interested in looking over the revisions prior to our next talk, which I hope we can arrange for some time next week. A copy of the latest draft is enclosed.

There have been only three substantive changes -

1. Subparagraph 4 on Page 9 permits Cities to charter tankers on a temporary basis pending construction of its own tankers. This is limited to a two year period at the beginning of the contract. From our investigations it appears almost certain that we will not be able to have constructed sufficient tankers of our own to deliver the crude by the time your refining facilities are completed. Since it will be to our mutual advantage to begin the contract as soon as you are able to process for us, it was thought that we might make temporary charters and get the contract going by the middle of 1953.

2. Subparagraph 9 on Page 12 provides for a ten year contract with an option on the part of Gulf to stop processing for us at the end of seven years from the date of completion of construction of tankers. This provision differs somewhat from the termination provisions included in the draft of the contract which you delivered to us.

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Exhibit 12, Annexed to Affidavit of George H. Hill, Jr.

3. Subparagraph 10 on the same page provides for an option on the part of Cities to take additional crude up to 30,000 b/d, in respect to which Cities is to accept responsibility not only for transporting but for processing.

As soon as we get our ideas in more definitive form, I will telephone you and try to arrange a meeting for further discussion. In this connection it occurs to me that the main difficulty, if any, that we will have in coming to a final agreement will be on the question of the allowance for the cost of the tankers to be constructed. Our people indicate that construction costs have increased rather rapidly and may continue to do so. How would your Company react to writing in the contract that the write-off of the costs shall be on a seven year basis and shall be computed as though half the tankers were built in foreign yards and half in this country at prevailing costs per ton in each instance, such costs to be determined and agreed upon by the parties at the time construction contracts are made?

Very truly yours,

Geo. H. Hill Jr.
Assistant to the President

Enc.

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EXHIBIT 13, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

PETROLEUM AND ITS PRODUCTS

GULF OIL CORPORATION

GULF BUILDING · PITTSBURGH 30, PA.

R. M. BARTLETT
VICE PRESIDENT

January 17, 1952

INCLUDING SUBSIDIARY
GULF REFINING COMPANY

Mr. B. S. Watson, Vice President
Cities Service Company, Inc.
60 Wall Street
New York 5, New York

Subject: CITIES SERVICE COMPANY, INC.
Proposed Basis, Processing Kuwait
Crude - Philadelphia

Dear Mr. Watson:

Referring to the very pleasant visit Mr. Hurley and I had with Mr. Hill in his office Monday, January 7, and the visit I had with you and Mr. Hill the next day, I thought that it might accelerate our thinking if I reduced to writing the developments as I understand them in connection with working out the above processing deal. The items listed below refer to Mr. Hill's letter to me dated November 27, 1951, and his attached draft.

1. PROVISIONS FOR COMPUTING FIXED CHARGES FOR 7-YEAR TANKER PAYOUT

Mr. Hill was of the opinion, based on suggestion he understood Mr. Swensrud made to Mr. Watson, that we should use in our calculations a ceiling price of _____ million dollars for the construction of five or six tankers, leaving it to Cities to build these tankers wherever they wished, i.e., United States and/or foreign. We told him that we felt such ceiling should be somewhere between $27,500,000 and $30,000,000 for five tankers, which we estimate can transport about 20,000 barrels per day of Kuwait crude to Philadelphia. Mr. Hill replied that he felt this figure was low, according to information given him by his Marine Department, especially as it would be necessary to have most of the tankers built in the United States in view of desired delivery in about 18 to 24 months, and it was left, as a result of our discussion the following day in your office, that we would see what the results would be if we increased the ceiling for five

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tankers to $32,500,000 or $35,000,000. I explained, however, that if we should agree to a higher cost of tankers, it might be necessary for us to ratably extend the payout period beyond seven years, in order to give us the same realization. This would of course also defer the time when our realization would be stepped up by virtue of your investment having been recovered.

It was agreed that you would endeavor to get some actual quotations and that we would ask our Marine people to give us their latest information on construction costs and delivery dates.

2. DIFFERENTIAL IN PRICE OF PRODUCTS -METHOD OF DELIVERY (Page 4, Paragraph A)

Mr. Hill stated the first day that he thought we should use actual costs and he is going to develop with his Sales people what he thinks these should be. I told Mr. Hill we would reconsider and perhaps have some sort of a sliding scale escalating upward in order to discourage large volume of small deliveries and avoid crowding our loading facilities.

This matter is more or less academic anyway, as Mr. Hill advised Cities will probably build a terminal to be connected by products pipe line from our Philadelphia refinery.

3. AGREED-UPON "FIXED AMOUNT" IN CHARTERED VESSELS - LONG TERM (Page 8, Subparagraph 3)

If long-term charters are used, Mr. Hill stated he felt that factor "C" (cost of crude transportation from Kuwait to Philadelphia in the formula) should be the same as factor "C" as determined for their purchased tankers, less interest charge. This seems reasonable to us.

4. TRANSPORTATION ALLOWANCE TO CITIES -INTERIM CHARTERS (Page 9, Subparagraph 4)

After considerable discussion of this subparagraph the first day, Mr. Hill stated that the maximum figure he had in mind for Cities' transportation allowance for interim charters was factor "C" of the formula as determined for vessels constructed by Cities for operation under the proposed contract. We stated we had no objection to this basis.

Exhibit 13, Annexed to Affidavit of George H. Hill, Jr.

5. TERMINATION OF CONTRACT
(Page 12, Clause 9)

Mr. Hill agreed that Cities proposal should be modified to include only processing costs incurred by Gulf in manufacturing and shipping the products referred to in this agreement.

6. PURCHASE OF ADDITIONAL CRUDE BY CITIES
(Page 12, Clause 10)

Mr. Hill agreed to the same modification as in No. 5, above.

7. CANCELLATION CLAUSE
(Page 10, Clause 6)

You stated you wanted to investigate further with your Sales people the cancellation clause based on the posted well price for West Texas sour crude. I explained to you that this was inserted to take care of any demoralized product prices with crude prices remaining more or less stable, and you stated this provision appeared reasonable.

* * * * * *

During the discussion of options in your office, we stated we felt Gulf's and Cities' proposed options were really not in conflict with each other and you agreed to review these proposals and get in touch with me.

The major item still requiring a meeting of minds is agreement on maximum cost of tankers on a 7-year payout basis. There is also a possibility that if long-term charters at attractive rates are available, we might be willing to take some or all of them off your hands when your purchased tankers are available.

There were, of course, several minor changes which your people made in your write-up, dated November 27, 1951. Mr. Hurley and I went over these very carefully with Mr. Hill and it was agreed that these changes seemed to be minor in nature and didn't change the meaning.

While I believe that the above pretty well outlines our discussions, if there are any items which you feel have been omitted, or any

Exhibit 13, Annexed to Affidavit of George H. Hill, Jr.

which you think should still be raised, I would greatly appreciate hearing from you promptly, as the purpose of this letter is to hasten our negotiations. When the time comes to write definitive contract we can then incorporate usual force majeure clause, etc.

With kindest regards.

Yours very truly,

R W Babbitt

Vice President

RMB:mar

EXHIBIT 14, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

MEMORANDUM

February 26, 1952

I - Synopsis of proposed contract for purchase of Kuwait crude.

1. Cities will purchase from Gulf an average of 20,000 b/d of Kuwait crude.

2. Cities will provide transportation (5 super tankers-30,000 DWT each) for this amount of crude from Kuwait to Philadelphia.

3. Gulf will process crude for Cities' account at its Philadelphia refinery and deliver to Cities products equal to average yields at the refinery.

4. Cities will pay Gulf for the crude and the processing the following:

   (A) Platt's Gulf Coast low for the amount of products delivered, plus

   (B) Transportation cost from Gulf Coast to Philadelphia.

   From the sum of the foregoing there will be allowed Cities the following:

   (C) 1. Operating cost for the Kuwait to Philadelphia tankers, such operating costs not to exceed Gulf's average operating costs for similar tankers.

   2. An amount to be agreed upon between the parties for amortization of tanker costs.

   3. Interest on average unamortized amount of tanker costs at rate of 4% per annum.

   (D) Duty paid by Cities on importation of crude.

   (E) 25 ¢ per barrel.

   Product costs to Cities at Philadelphia, therefore, will be based on the formula (A + B) - (C + D + E) letters being defined as above.

5. Floor on payment to Gulf. If at any time payment to Gulf for crude and processing is less than $1.50 per barrel or if Platt's low for products at Gulf Coast plus transportation to Philadelphia is less than posted wall price for West Texas crude plus 70¢ per barrel, Gulf can cancel contract unless Cities makes up deficiency.

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Exhibit 14, Annexed to Affidavit of George H. Hill, Jr.

6. Cities to have option during the contract term to purchase additional crude up to 30,000 b/d, such additional crude to be processed elsewhere and Gulf to make an additional allowance to Cities for processing.

7. Contract will run 10 years from effective date.

8. Gulf desires an additional option to continue selling us crude after expiration of contract, if we need it and they meet other offers pricewise. Language of this option has not been worked out.

II The principal discussions in connection with the proposal have revolved around the amount to be allowed for amortization of tanker costs - C 2 in the foregoing formula. Cities has taken the position that sufficient amortization should be allowed to pay out the full costs of the tankers in 7 years. Gulf is willing to allow a payout of as much as $30,000,000 of the tanker costs in 7 years, but state that the payout period must be extended if the costs exceed $30,000,000 inasmuch as any amortization over that amount will bring their net back price of crude at Kuwait to such a low figure they are unable to live with it. We have had numerous discussions on this point and it is my opinion that Gulf is not likely to yield very much more in this respect.

Appendix A consists of computations showing the maximum costs of tankers assuming all of them would have to be constructed on the high cost basis prevailing in the United States yards and allowing a liberal amount for escalation in costs and extra equipment.

Appendix B shows Cities Service position under the proposed formula with maximum tanker costs and assuming Gulf's allowance for amortization is limited to the amount already agreed upon by them.

III The purpose of this memorandum is to bring the discussions up to date and to present Cities picture under the contract in the most unfavorable light, i.e. assuming maximum costs for tankers, allowing liberal amounts for cost escalation, and assuming Gulf will yield no further on the amortization allowance. On this basis management should be in position to consider the desirability of granting authority to the appropriate officers to finalize the transaction. Attention is called to the following:

1. Preliminary discussions have reached the point where Cities should be able to make a firm offer.

2. Gulf is reserving 20,000 b/d refining capacity for Cities in its new refinery being constructed at Philadelphia. Unless we make further definite progress within the reasonably near future it may be difficult to maintain Gulf's commitment in this respect.

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3. Cities cannot make commitments for tanker construction until a definitive agreement is made with Gulf. In the meantime tanker yards are being gradually filled throughout the world making it less likely that we will be able to obtain some of the ships in foreign yards where costs are less.

IV Additional Appendices Attached.

1. Appendix C - Comparison of costs to Cities Service Oil Company (Pa.) of products to be delivered under proposed Gulf contract with costs of products being delivered by Cities Service Refining Corporation (Present prices being used in each instance).

2. Appendix D - Text of proposed agreement.

EXHIBIT 15, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

GULF EXPLORATION COMPANY

GULF BUILDING · PITTSBURGH, PA.

April 23, 1952

Mr. B. S. Watson, Vice President
Cities Service Company, Inc.
60 Wall Street
New York 5, New York

Dear Mr. Watson:

Referring to the discussions in your office April 2, and my phone conversation with you from Boston April 14th and from Pittsburgh April 21st, we are prepared to enter into a contract to cover sale and processing agreement for approximately 21,000 b/d of Kuwait crude at our Philadelphia Refinery, based on the following items. I believe you will find these closely follow the proposal you gave me. We have used an interest rate of 3-1/2% which I understand should be procurable, and it is possible you might even obtain a somewhat lower rate.

1. Gulf agrees to sell Cities and Cities agrees to purchase from Gulf 21,000 b/d, 5% more or less, Kuwait crude deliverable f. o. b. Mina al Ahmadi, in tankers to be supplied by Cities, during the period beginning not later than January 1, 1955, and terminating not later than December 31, 1966.

2. Cities will transport the crude from Kuwait, import the crude to the United States and Gulf will process the crude into products at Philadelphia.

3. Cities will build, purchase and/or charter sufficient vessels to transport approximately 21,000 b/d. Gulf will allow Cities regular and added depreciation plus interest at 3-1/2% on one-half of the investment to pay out five tankers of not less than 30,000 dwt capacity in 8-1/2 years, each assumed to cost $8,200,000 plus interest of $180,000 assumed to be incurred during the period of construction, (i. e., making a total of $8,380,000 per vessel). On the assumption that a 30,000 dwt tanker will transport 4,217 b/d Kuwait crude from MAA to Philadelphia, and that the variable cost would be as shown below, the total cost of transportation during the payout period would work out about as follows:

Exhibit 15, Annexed to Affidavit of George H. Hill, Jr.

(a)	Regular and added depreciation	$0.641 per bbl.
(b)	Interest (3-1/2% on 1/2 investment)	$0.095 " "
(c)	Gulf's actual variable cost	$0.650 " "
	Total	$1.386 per bbl.

After the first 8.5 years of operation of each vessel, the above total cost of transportation shall be reduced to an amount per barrel calculated to allow Cities a total of 6-3/4% per year on the $8,380,000 assumed cost of the vessel, representing return on the investment. This works out about as follows:

(a)	6-3/4% return on investment	$0.367 per bbl.
(b)	Gulf's actual variable cost	$0.650 " "
	Total	$1.017 per bbl.

4. Cities agrees to charter for its own account any tankers that may be necessary in order to be in a position to start delivering full contract quantity of 21,000 b/d by January 1, 1955, which your Mr. Story was told would be about the time required to build five 30,000 dwt tankers in U.S. yards. Deliveries may start at any time after Gulf's expansion program at Philadelphia is completed, now estimated as October, 1953. This puts the contract period on a sliding scale dependent on rate of delivery of Kuwait crude to Philadelphia. For example, based on probable delivery time of tankers, Cities might be in position to deliver 4,000 b/d crude to Philadelphia in the fourth quarter of 1953, 8,000 b/d in the first quarter of 1954, 12,000 b/d in the second quarter of 1954, 16,000 b/d in the third quarter of 1954, and 21,000 b/d in the fourth quarter of 1954, and the contract would decrease at the same rate expiring in the fourth quarter of 1966. However, should Cities desire to deliver crude oil at a faster rate, Gulf will be in position, if notified not later than July 1, 1953, to accept the full contract quantity of about 21,000 b/d, commencing with the completion of the new Philadelphia Refinery facilities. Cities shall advise Gulf not later than July 1, 1953, its anticipated schedule of Kuwait crude deliveries during the interim period beginning October 1, 1953 and ending January 1, 1955. However, Cities shall have the right to increase its deliveries any time during the interim period by giving Gulf three months' written notice. Gulf

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shall have the option on the giving of three months' written notice to furnish any or all of the balance of the transportation for Cities' account up to a total of 21,000 b/d during any part of the interim period at a charter rate equal to the "cost of transportation" as provided for in the contract covering the first 8.5 years. Any crude oil delivered by Cities during the interim period as a result of transportation made available to Cities by Gulf shall be treated as an additional sale of crude and processing and shall not apply against the contract quantity.

5. Since the tanker payout allowance (Item 3 above) is based on an assumed U.S. yard cost of $8,380,000, a proportionate cost will be used in calculating the cost of transportation from the Gulf Coast to Philadelphia (Factor B of the formula). This revision will increase the previously stated cost of $2.5615 per ton by about $0.10 per ton.

6. Cities has the right to cancel the processing portion of the agreement at the end of any calendar year after December 31, 1959, on giving Gulf not less than 18 months' written notice provided that Cities takes the crude to be processed in one of its refineries. If Cities exercises this right, Cities shall nevertheless continue to purchase the crude for the balance of the contract period, with the price of Kuwait crude reduced by the average costs per barrel (including plant overhead and ordinary depreciation) at Gulf's Philadelphia Refinery in the manufacture of products covered in the agreement.

7. Other Options

(a) Cities shall have the option, upon giving Gulf not less than six months' notice in writing, to purchase for its own use and for a period of not less than five years, up to 30,000 b/d additional crude f.o.b. Kuwait, if such crude is available for sale by Gulf, the price to be the same as under Item 6, above.

(b) In the event that Cities constructs its own refinery on the Eastern Seaboard, Cities shall give Gulf the first refusal to supply the crude oil requirements of this refinery for a period of not less than five years, provided that Gulf equates the price of the crude it is offering with the cost and value of other crudes available to Cities.

Exhibit 15, Annexed to Affidavit of George H. Hill, Jr.

Other applicable items to be incorporated in the formal contract will be along the lines of the draft of the proposed agreement attached to Mr. Hill's letter of November 27, 1951, as modified by later discussions, with the addition of a provision to take care of a "floor" covering the price of crude if you exercise your option to cancel the processing portion of the agreement. The final agreement will also include the necessary force majeure provisions.

As explained to you, Gulf has on order several supertankers of approximately 30,000 dwt each, which are scheduled for delivery prior to January 1, 1955, and which we believe will cost considerably less than $8,380,000 each. You stated to me that you might be interested in the purchase of any such tanker or tankers which we might offer, provided, of course, that any such deal were completed before you had reached the point of placing orders for corresponding vessels. We will be prepared to follow this matter up; and in the event we reach an agreement on the other terms, we can let you know about this in plenty of time. It is, of course, understood that in the event we did sell you any tanker or tankers on this basis, the price at which they were sold to you would be substituted in the contract for the figure of $8,380,000 in arriving at the fixed costs of interest and depreciation for the particular tankers involved over the contract period.

On receipt of word from you that we appear to be in basic agreement, we will start the preparation of the contract.

Yours very truly,

R. M. Bartlett

Vice President

RMB:mar

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EXHIBIT 16, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

May 23, 1952

Mr. R. H. Bartlett, Vice President
Gulf Oil Corporation
Gulf Building
Pittsburgh 30, Pennsylvania

Re: Proposed Contract
Kuwait Crude

Dear Mr. Bartlett:

Your letter of April 23 has not been given as prompt attention as we would have liked principally because the efforts of most of our executives have been directed toward the disruption caused by the oil workers strike. I have, however, gone over the proposal rather carefully and have discussed some phases of it with Mr. Watson.

It seems to me that your letter is substantially in line with our latest conversations and it should furnish a basis for final discussions.

In this connection, however, since your letter accepts the principle of a definite assured cost for the tankers, I believe that we can simplify considerably the formula provided for in the tentative draft agreement forwarded with my letter of November 27, 1951. This draft provides for the formula $(A \div B) - (C \div D \div E)$. It is my suggestion that we change the definitions of C and E as they appear in the draft. C would equal only the variable costs which are now defined in C-1. E would equal 99 cents per barrel. The 99 cents is arrived at by adding the fixed amortization and interest to the 25 cents per barrel represented by E in the existing definitions. A provision would be added that after 65,152,500 barrels have been delivered at Philadelphia, E shall be reduced to 62 cents per barrel for the remainder of the contract.

With these changes we can eliminate paragraphs C-2, C-3, and C-4 from the contract. In addition there would be a flexibility in the use of transportation facilities, which is not available to us under the existing provision. We might wish to charter some of the transportation for various periods, put boats in and out of this particular service, or follow some other course not now contemplated. Under the present provision and the terms of your letter, we would have to keep particular specified boats in this service for 8½ years.

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Exhibit 16, Annexed to Affidavit of George H. Hill, Jr.

The changes suggested above will not, I believe, affect your position in any way. We are obligated to move the 21,000 barrels per day, and the transportation allowance is reduced after the delivery of 65,152,500 barrels, which is equal to the number of barrels that would be transported in 5 tankers of 30,000 DWT capacity in 8½ years.

There are some other items that require additional discussion such as the suggested option provision under paragraph 7 (b) of your letter, but I am confident we will have no great difficulty in coming to an agreement on these.

May I suggest that you give some thought to the suggested changes and then let me know when it will be convenient for you to be in New York for further talks.

Kindest personal regards.

Very truly yours,

Geo. H. Hill Jr.
Assistant to the President

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EXHIBIT 17, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

MEMORANDUM OF AGREEMENT BETWEEN GULF OIL CORPORATION (HEREINAFTER CALLED "GULF") AND CITIES SERVICE OIL COMPANY (PA.) (HEREINAFTER CALLED "CITIES") ENTERED INTO ON _____ DAY OF _____, 1952.

For and in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

1. Gulf agrees to sell to Cities, and Cities agrees to purchase from Gulf, 21,000 b/d (five per cent, more or less) of Kuwait crude oil deliverable F.O.B. Mina al Ahmadi, in tankers to be supplied by Cities, during the period beginning not later than January 1, 1953, and terminating not later than December 31, 1966.

2. Cities will transport the crude from Kuwait, import the crude into the United States and deliver it into Gulf's Philadelphia refinery crude oil tanks.

3. Gulf will process the Kuwait crude oil at its Philadelphia refinery and will deliver to Cities products, meeting Gulf's Philadelphia refinery manufacturing specifications, from each net barrel of Kuwait crude oil cleared through United States Customs by Cities, as follows:

Products	Vol. %	U. S. Gals. per Bbl. of Crude
Premium Gasoline	13.2	5.54
Housebrand Gasoline	31.3	13.15
Fuel Oil No. 2	22.1	9.28
No. 6 Fuel Oil	27.9	11.72
No. 6 Fuel Oil (gas equivalent)	5.5	2.31
Total products to Cities	100.0	42.00

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Cities will arrange to deliver and Gulf will provide tankage to receive Kuwait crude oil in approximately equal monthly quantities. Likewise, Gulf will arrange to furnish and Cities will arrange to move the products in reasonably equal monthly quantities as they accrue.

Upon giving Gulf six months' notice in writing, Cities will have the right to exchange up to twenty-five per cent of one product for other products listed above. A monetary adjustment will be made for the difference in the value of the products taken by Cities as compared to those to which it would otherwise be entitled from the yields as set forth herein. Such monetary adjustment shall be made on the basis of the sum of the wholesale Gulf Coast cargo prices (Factor A) and the calculated transportation costs to Philadelphia (Factor B) as described in Article 4 hereof and shown in Exhibit "A" attached. When Cities has once elected to make such an exchange of products, it shall remain in effect for a period of not less than six months.

4. Cities will pay Gulf for the crude oil F.O.B. Kuwait and for the Philadelphia Refinery processing the amount per barrel determined as follows:

(A) Value on the United States Gulf Coast of the forty-two gallons of products stated above plus (B) the calculated cost of transportation by tanker from the United States Gulf Coast to Philadelphia minus the sum of (C) allowance for cost of transportation of crude oil from Kuwait to Philadelphia, (D) U. S. import duty paid by Cities on the net barrels of Kuwait oil cleared

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through U. S. customs, and (E) $0.99 per barrel of Kuwait crude oil delivered to Gulf at Philadelphia; provided, however that after 65,152,500 barrels have been so delivered in tankers supplied by Cities, (E) shall be reduced to 62¢ per barrel for the remainder of the contract.

A. The value on the Gulf Coast of the products delivered to Cities each month shall be determined at the end of such month by applying to the quantity of each such product the average for the month of Platt's low quotations for "Gulf Coast Cargoes Domestic and Export, All Ports" for the respective product nearest to the grade or quality of each of such products. For example, according to such quotations, such product prices for the month of May, 1952, were those shown in Exhibit "A" attached. It is understood that in instances in which Cities takes delivery at Philadelphia of products in lots of less than barrels per barrel will be added to the value.

B. The calculated cost of transportation by tanker from the Gulf Coast to Philadelphia of the products which Gulf agrees to deliver to Cities at Philadelphia shall be determined on the assumption that such products would be transported in an 18,000 DWT, 15 knot, steam turbine driven products tanker constructed for coastwise service in a United States yard at a cost of $279 per DWT, that such vessel is operated with a normal crew paid at prevailing

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salary and wage rates, that insurance is carried on ship and cargo, that Bunker "C" fuel is procured at prevailing Gulf Coast market prices, that normal costs are incurred for food, supplies, and maintenance, that the ship is depreciated on a 20-year basis down to 2½% salvage value; and that an interest cost is incurred of 3½% per annum on one-half of said original investment cost. It is agreed between Cities and Gulf that until a new rate is established in the manner herein below provided, such calculated cost of transportation from the Gulf Coast to Philadelphia will be $2.6615 per ton, which is today's cost arrived at as set forth in Exhibit "B" attached. In the event that either party notifies the other in writing that in its opinion the cost of transportation from the Gulf Coast to Philadelphia determined as specified herein is either 10% more or 10% less than $2.6615 per ton, the two parties shall endeavor to agree on a new rate to be used based upon any changes that may have occurred in the operating expense items. If the parties are unable to agree as to whether a new rate is indicated, or upon the amount of such new rate, then each party shall designate one representative and these two representatives shall appoint a third party who shall act as chairman, and the three so selected shall determine the cost of transportation from the Gulf Coast to Philadelphia on the basis of the assumption and factors set forth herein and the basis so determined shall be binding on both parties. It is understood that the new rate agreed upon is also subject to revision from

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time to time as outlined above if costs of transportation become 10% more or 10% less than the revised rate then in effect.

For calculation purposes, it is agreed that the following conversion factors will be used:

One ton equals 2,240 pounds,
One ton equals 8.7 barrels of Premium Gasoline, of 42 U.S. gals.
One ton equals 3.7 barrels of Housebrand Gasoline, " " "
One ton equals 7.5 barrels of Fuel Oil No. 2, " " "
One ton equals 6.5 barrels of No. 6 Fuel Oil, " " "

C. The allowance for cost of transportation of crude oil from Kuwait to Philadelphia shall be equal to the average of such cost incurred by Gulf or by its subsidiaries or affiliates in the operation during the preceding six-month period of all foreign flag tankers of 28,000 to 32,000 dead weight tons engaged in the Kuwait to Philadelphia crude oil service and reduced to a per barrel basis on the basis of deliveries made after making due allowance for incompleted voyages. Such costs shall not include any amount for depreciation or amortization of tankers or interest on the investment therein. Exhibit "C", attached, shows the average cost incurred by Gulf or by its subsidiaries or affiliates for the first six-months of 1952. Gulf and Cities agree that the list of operating expenses and the amounts shown for each as set forth in Exhibit "C", attached, constitutes a fair determination of such costs as of the present time. Gulf will furnish Cities with a similar breakdown of its operating expenses as of each

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January 1 and July 1 based on the preceding six-months periods, and the total of such revised operating expenses on a per barrel basis shall be used for the ensuing six months.

5. Gulf shall have the right to substitute for Kuwait crude oil, in whole or in part, any other crude oil it may have available and as to such substituted crude shall have the right to change the loading port from Kuwait to any other port upon giving Cities three months' notice in writing of its desire to make such substitution. In such event Gulf may bill Cities for such substituted crude oil at Gulf's prevailing price at the loading port provided, however, that the net cost to Cities and the quality and the quantity of the products delivered to Cities in Philadelphia as a result of this substitution, will remain unchanged as though there had been no interruption in the delivery by Cities of Kuwait crude oil to Gulf's Philadelphia refinery. Should the crude oil substituted require additional transportation facilities or costs, Gulf shall be required to supply such additional transportation facilities and also compensate Cities for any additional transportation costs incurred by it as a result of such substitution. Contrariwise, should any savings result to Cities from the substitution Gulf shall be credited with such savings. Should the substitution result in any surplus transportation capacity on the part of Cities, Gulf will provide other cargoes for such vessels or charter same from Cities on a basis that will yield Cities as much return as would have been produced if the surplus transportation had remained in service under this contract.

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6. Gulf will render two billings to Cities as follows:

(1) Gulf will bill Cities at Gulf's prevailing prices per barrel F.O.B. Kuwait or substitute loading port, if applicable, for each cargo of crude oil lifted by Cities when cable advice is received by Gulf stating the vessel name, loading port, loading date, gravity, and net barrels loaded.

(2) Gulf will bill Cities a second amount as soon as possible after the first of each month for the balance due computed pursuant to Article 4 hereof and based on the net quantity of crude oil cleared through United States Customs by Cities during the preceding month. The sum of the two billings will equal the total amount due Gulf calculated by Formula $(A + B) - (C + D + E)$ as defined herein. All cargo losses en route to Philadelphia will be for Cities account.

7. At the end of any calendar year after December 31, 1959, Cities shall have the right to cancel that portion of this agreement which relates to Gulf's processing the crude for the account of Cities, on giving Gulf not less than 18 months written notice provided that Cities takes the crude to be processed in one of its own refineries. If Cities exercises this right, Cities shall nevertheless continue to purchase the crude for the balance of the contract period, with the price of such crude reduced by the average costs per barrel (including plant overhead and ordinary depreciation) incurred at Gulf's Philadelphia refinery in

Exhibit 17, Annexed to Affidavit of George H. Hill, Jr.

the manufacture of products covered in the agreement. Gulf agrees to furnish Cities with a breakdown of such costs each three months after Cities exercises its option to cancel as provided in this Article.

8. Cities shall have the option, upon giving Gulf not less than six months' notice in writing, to purchase for its own use and for a period of not less than five years, up to 30,000 b/d additional crude f.o.b. Kuwait, if such crude is available for sale by Gulf, the price to be the same as under Article 7, above.

9. In the event that Cities constructs its own refinery on the Eastern Seaboard, Cities shall give Gulf the first refusal to supply any crude oil which Cities desires to purchase in order to meet the requirements of such refinery for a period of not less than five years, provided such crude oil offered by Gulf is of the type and quality desired by Cities for the operation of such refinery and provided further that Gulf equates the price of the crude it is offering with the cost and value of other crude available to Cities.

10. Cities agrees to purchase or charter for its own account such tankers as may be necessary in order to be in position to start delivering full contract quantity of 21,000 b/d (five per cent, more or less) by January 1, 1955. Deliveries may start at any time after Gulf's expansion program at Philadelphia is completed, now estimated as October, 1953. The contract purports to cover an average of 21,000 b/d (five per cent, more or less) for a period of twelve years; thus in the event partial deliveries are made during the interim period after the completion of Gulf's refinery facilities at Philadelphia and prior to January 1, 1955, the quantities delivered at the end of the contract

Exhibit 17, Annexed to Affidavit of George H. Hill, Jr.

will be decreased accordingly. Cities shall advise Gulf not later than July 1, 1953 its anticipated schedule of Kuwait crude deliveries during the interim period beginning October 1, 1953 and ending January 1, 1955. However, Cities shall have the right to increase its deliveries any time during the interim period by giving Gulf three months' written notice. Gulf shall have the option on the giving of three months' written notice to furnish for Cities' account such transportation as may be necessary to make the deliveries total 21,000 b/d during any part of the interim period at a charter rate equal to Factor C in the foregoing formula plus 7¢ per barrel.

11. If, at any time during the existence of this agreement and during the time Gulf is processing the crude oil for Cities account, the application of the formula (A + B) - (C + D + E) provided in Article 4 hereof results in a payment to Gulf in any one month of less than an average of $1.50 per barrel or that the average sum of Factors A and B in said formula for any one month is less than the posted well price for 35.0° - 35.9° West Texas (sour) crude oil (now $2.42 per barrel) plus $0.70 per barrel, Gulf shall have the right to cancel this agreement as to future deliveries hereunder after 90 days advance written notice to Cities, unless Cities, within 30 days of the receipt of such notice, offers in writing to increase the net realization to Gulf sufficiently to overcome the deficiency.

If at any time during this agreement Cities exercises its option provided for in Article 7 to cancel that portion of the agreement relating to Gulf's processing the crude for Cities account and thereafter the application of the formula (A + B) - (C + D + E) provided in Article 4 hereof results in a payment to Gulf in any one

Exhibit 17, Annexed to Affidavit of George H. Hill, Jr.

month of less than an average of $1.00 per barrel, Gulf shall have the right to cancel this agreement as to future deliveries hereunder after 90 days' advance written notice to Cities, unless Cities, within 30 days of the receipt of such notice, offers in writing to increase the net realization to Gulf sufficiently to overcome the deficiency.

EXHIBIT 18, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

GULF OIL CORPORATION

GULF BUILDING

PITTSBURGH 30, PA.

R. M. Bartlett
Vice President

June 30, 1952

Mr. George H. Hill Jr.
Assistant to the President
Cities Service Company, Inc.
60 Wall Street
New York 5, New York

Dear Mr. Hill:

We have gone over the latest draft of "Memorandum of Agreement" dated June 16, attached to your letter of the same date, and we feel that in general it gives the intent of the agreement we are trying to work out with you in connection with Cities purchasing Kuwait crude oil from Gulf and Gulf processing such crude oil at its Philadelphia refinery for Cities' account, after the expansion program in Philadelphia is completed. While I have no doubt our respective law departments will wish to make changes in language for purposes of clarification, etc., before the final agreement is ready for execution by our respective companies, nevertheless we feel your draft, subject to the necessary clarifications mentioned below, covers the important points resolved after various discussions.

In addition to the force majeure clause which you point out has been omitted, other appropriate items will have to be included in the final contract, such as details of vessel nominations, usual shipping notices, loading rate, gauging, billing, terms of payment, customary assignment clause, a clause to the effect that the contract is subject to the prior rights of governments and that the laws of the Commonwealth of Pennsylvania will govern the contract, etc.

Also, while paragraph 6 (2) provides that "all cargo losses en route to Philadelphia" will be for Cities' account, we feel this clause should be amplified in the final agreement so as to cover our receiving payment for usual evaporation losses in transit as well as other cargo losses on the basis of Gulf's current spot cargo price f.o.b. Mina al Ahradi on date vessel loaded. This may require some incidental rewording of other related provisions.

11274

Exhibit 18, Annexed to Affidavit of George H. Hill, Jr.

We also feel that Factor "E" in Paragraph 4 requires clarification and should be written so as to cover two periods ("E-1" and "E-2"), in order to take care of deliveries that are made prior to January 1, 1955, as outlined in Paragraph 10. It seems to us that this can be covered readily by stating that Factor "E-1" (93.6¢ per barrel) will be in effect from the date the first delivery is made until the total quantity of 65,152,500 barrels has been completed, with, however, June 30, 1963 as a deadline, this being the end of the 8-1/2-year period of the contract. Factor "E-2" (61.7¢ per barrel) will automatically become applicable July 1, 1963, unless prior to that date the total quantity of 65,152,500 barrels has been delivered in which event "E-2" would apply to the balance of 26,827,500 barrels due to be delivered by Cities over the remaining 3-1/2 years of the contract. Under the above provision, Factor "E-2" might therefore become effective prior to July 1, 1963.

In view of the quantity we also feel that various calculations should be carried to four decimal points, as we have done in the Exhibits.

Undoubtedly there may be some other conditions that your people will want to add, and in this connection, we suggest that probably there should be some definite provision governing fire losses while the crude oil or products are in our custody.

Pursuant to your request, I am attaching revised Exhibits "A," "B" and "C," giving the latest figures available, which will be used in writing the contract.

Vacations are creeping up on us. I would greatly appreciate hearing from you as soon as possible so that we can prepare formal contract.

With kindest regards.

Yours very truly,

/s/ R. M. Bartlett

Vice President

HDDurar
Attach.

11275

EXHIBIT 19, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

MEMORANDUM

July 3, 1952

I - Synopsis of proposed contract for purchase of Kuwait crude.

1. Cities will purchase from Gulf an average of 21,000 b/d (five per cent, more or less) of Kuwait crude.

2. Cities will provide transportation for this amount of crude from Kuwait to Philadelphia.

3. Gulf will process crude for Cities' account at its Philadelphia refinery and deliver to Cities products equal to average yields at Gulf's refinery. Upon six months notice Cities has right to substitute up to 25% of one product for another upon making monetary adjustment.

4. Cities will pay Gulf for the crude and processing on the formula (A + B) - (C + D + E), wherein the factors are equal to the following:

   A equals Platt's Gulf Coast low for the amount of products delivered.

   B equals transportation cost from Gulf Coast to Philadelphia.

   C equals operating costs (exclusive of depreciation and interest) of Kuwait to Philadelphia tankers, such operating costs not to exceed Gulf's average operating costs for tankers in similar service.

   D equals duty paid by Cities on importation of crude.

   E equals 98.6¢ per barrel until 65,152,500 barrels have been delivered (approximately 8-½ years); thereafter for an additional 3-½ years E equals 61.7¢ per barrel. Factor E includes the following: 25¢ per barrel discount plus .6405 per barrel depreciation allowance plus .0953 interest allowance. Interest is figured at 3½% per annum on one-half of principal and the depreciation is sufficient to return $41,920,000 in 8-½ years.

5. After five years Cities has the right to cancel the processing portion of the agreement and construct its own refinery in which event the amount paid to Gulf will be reduced by the cost of processing crude at Gulf's Philadelphia refinery.

11276

Exhibit 19, Annexed to Affidavit of George H. Hill, Jr.

6. Floor on payment to Gulf. If at any time payment to Gulf for crude and processing is less than $1.50 per barrel or if Platt's low for products at Gulf Coast plus transportation to Philadelphia is less than posted well price for West Texas crude plus 70¢ per barrel, Gulf can cancel contract unless Cities makes up deficiency. If Cities builds its own refinery after five years the floor on the payment to Gulf becomes $1.00 per barrel.

7. Cities is to have an option during the contract term to purchase additional crude up to 30,000 barrels a day, such additional crude to be processed by Cities. For any of the option crude Gulf will make an allowance to Cities for processing equal to Gulf's cost of processing at its Philadelphia refinery.

8. Contract will run twelve years from January 1, 1955, or earlier if Cities begins taking full amount of crude prior to January 1, 1955.

II - Comments.

1. An interesting and perhaps important feature of the proposed contract is that the price to be paid to Gulf for the crude is tied to the price of products in this country and not to our crude price. Thus any dislocation of structure caused by increase in price of crude here without comparable increase in products prices would not affect us under the contract.

2. Transportation Department estimates can move this amount of crude with four tankers of 37,500 DWT capacity to be built in the United States at a cost of $9,019,000 each or a total investment of $36,076,000. Under the agreement Gulf allows us to recover through accelerated depreciation $41,920,000.

3. Attached figures show comparisons between Gulf contract and the purchase of products on the Gulf Coast at today's price plus transportation to Philadelphia.

11277

EXHIBIT 20, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

Mr. Hill —
Memo I prepared for
Mr Jones
BCW

July 8, 1952

MEMORANDUM

TO: Mr. W. Alton Jones

RE: Proposed Contract with Gulf Oil for Long-Term Supply of Middle East Crude.

For a number of months we have negotiated with Messrs. Svensrud and Bartlett of the Gulf Oil Company for a supply of from 20,000 to 50,000 barrels per day of Kuwait crude, with a provision for processing such crude at Gulf's Philadelphia refinery.

A brief summary of the essential features of the deal follows:

1. Term of the contract to be for a period of 12 years.

2. Cities to provide transportation and be the importer of the crude.

3. Gulf to process crude for Cities account at its Philadelphia refinery and deliver to Cities products equal to the average refinery yields. Cities to have the right after 5 years to provide its own refinery facilities. The contract then to be adjusted accordingly.

4. Price to be paid for crude oil at Kuwait to be determined as follows:

a. Products delivered to Cities to be priced out at Platt's low at Gulf Coast, plus cost of transportation from Gulf to Philadelphia. Cities to receive a discount of 25¢ per barrel from the foregoing total delivered price, to serve as a guaranteed marketing profit.

b. From the above total, the following deductions are made:

(1) Import duties, whatever the amount.

(2) Transportation cost, exclusive of depreciation and interest, to be actual cost, but not to exceed Gulf's cost for similar Persian Gulf to Philadelphia service.

(3) A depreciation allowance, which after long negotiations has been set at a flat figure of $.6405 per barrel for the first 8½ years of this contract. This amount is estimated to amortize

Exhibit 20, Annexed to Affidavit of George H. Hill, Jr.

the cost of four 37,500 DWT tankers costing $36,076,000, in 7.5 years.

In addition to operating expenses and depreciation, an allowance is also made for interest at 3½%.

c. The above formula determines the price that Gulf will receive for crude at Kuwait. We estimate under present conditions that they would get approximately $1.35 per barrel for this crude. Gulf has insisted upon a floor which is equivalent to from 95¢ to $1.00 per barrel, which from our standpoint would seem to be safe in view of the going price of Middle East crude of around $1.75 per barrel and also the present price for West Texas crude.

Under present conditions we estimate that our total cash production from this operation during the first 8½ years would be at the rate of $6,866,000 per year, which would be equivalent to a 5.3 years payout on the cost of the tankers. During the last 3½ years of the contract, the cash production would be under present conditions $4,000,000 per year.

All of the foregoing is based upon 20,000 to 21,000 barrels per day. If we exercise the option for the additional 30,000 barrels daily of crude oil, cash production would be increased proportionately.

11279

EXHIBIT 21, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

July 8, 1952

Mr. B. S. Watson:

The Operating Committee, in conjunction with Messrs. Christian, Kelley and Hill, have today reviewed in detail the "Memorandum of Agreement Between Gulf Oil Corporation and Cities Service Oil Company" covering the purchase and processing of Kuwait crude (Draft 6-16-52).

It is the unanimous opinion of this group that in general the proposed agreement is economically sound and to the best interests of the Cities Service organization.

Various relatively minor recommendations were made to improve the contract terms and such recommendations will be the subject of negotiations with the Gulf representatives.

A. F. Frame

E. G. Christian

W. W. Love

O. L. Mateer

J. E. Reston

J. A. Kelley

11280

EXHIBIT 22, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

MEMORANDUM

TO: Mr. B. S. Watson July 23, 1952

RE: Gulf Contract

Yesterday I had a long talk with Bob Bartlett on the Gulf contract and it appears that we are pretty much together on the various provisions, with the exception of the storage problem. He is having a very difficult time finding a means to assist us in this respect. Our people advise that we want to load out practically 100% in tank cars and tank trucks and his facilities are not sufficient, so he says, to take care of our load together with his own. He says he would have to put in as much as three million dollars in new equipment and would want us to pay for it.

I explained to him that we felt the real answer was to have our own terminal with a pipeline connection. He has been unable to dig up any land for this purpose. At his suggestion I am asking George Watson and probably Joe Kelley to arrange to talk with Bonner Barnes about the problem. Bonner is the big boy insofar as that refinery is concerned and I get the impression from Bob Bartlett that probably Bonner could help more than he has seen fit to promise if he tried.

The Gulf people do not want to sign a memorandum agreement but prefer the final contract. They are now rewriting the various provisions that have been agreed upon in the form of a final contract and this should not delay the deal unduly. We should get something from them the latter part of next week.

I'm sure I'll be back before the matter comes to a head.

GHH

EXHIBIT 23, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

PETROLEUM AND ITS PRODUCTS

GULF OIL CORPORATION

GULF BUILDING : PITTSBURGH 30, PA.

INCLUDING SUBSIDIARY
GULF REFINING COMPANY

R. M. Bartlett
Vice President

August 12, 1952

Mr. Geo. H. Hill, Jr.
Assistant to the President
Cities Service Company, Inc.
60 Wall Street
New York 5, New York

Dear Mr. Hill:

I am enclosing four copies of draft of agreement covering sale of Kuwait crude oil and processing at our Philadelphia refinery which have been under discussion for some time. As you have advised me that your Marine people are very anxious to get started on the purchasing of tankers involved, this draft has been rather hurriedly run through departmental "rollers" and still may need a little smoothing out and polishing. In the main, however, I believe it reflects our respective views, and I have no doubt but what your people will also have some suggestions to make.

You will recall that there were a few items, such as storage at Philadelphia during the interim period if we supply tankers, maximum quantity of products to be taken by various methods at our terminal, terminaling charges, etc., which were still unsettled at our last meeting. After considerable checking here with our people, we have incorporated our ideas of what we are prepared to do pending erection of your own Philadelphia terminal, which I understand is a definite part of your program. We have given considerable thought to these matters and believe the positions taken are reasonable. You will also notice that several other items have been included which have not been brought up before but which are necessary in the formal agreement.

Revised Exhibits "A," "B" and "C" will be forwarded to you in the next few days.

The agreement has been written in the name of Cities Service Company, which we presume is satisfactory to you.

I shall be glad to discuss this draft with you at your convenience in New York or, if you think time would be saved by you or any of your associates coming to Pittsburgh, I shall be very happy to arrange for a meeting here.

With kindest regards.

Sincerely yours,

Vice President

RMB:red

11282

EXHIBIT 24, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

PETROLEUM AND ITS PRODUCTS

GULF OIL CORPORATION

DIVISION SALES OFFICE
E. WALDO EMERSON
DIVISION GENERAL MANAGER

17 BATTERY PLACE · NEW YORK 4, N. Y.

SUCCESSOR TO GULF REFINING COMPANY

October 2, 1952

Mr. George H. Hill, Assistant to the President
Cities Service Company, Inc.
60 Wall Street
New York, N. Y.(5)

Dear Mr. Hill:

I am attaching three copies of draft dated September 26th, in which we have incorporated revised write-up of several items as well as a few new ones which have been discussed with you and your associates.

You will recall my telling you during our discussion in your office September 26th that while we were agreeable to a loading rate of 7,500 barrels per hour for crude oil, I thought we could induce our Marine Department to accept the "berth or no berth" provision that Mr. Story was so insistent about provided the discharge rate for crude oil at Philadelphia was shown as 5,000 barrels per hour, the loading and discharge time used to be accumulated over a year's period. Mr. Story's memorandum attached to your letter to me dated September 26th refers to discussion of these points during a recent meeting he and Mr. Maddocks had with our Marine people in our New York Office which Mr. Hurley and I also attended. According to my recollection, however, these matters were subject to further check with our Refinery people at Philadelphia to determine if they were acceptable. I am sure Mr. Story will recall our mentioning among other things that we were handicapped by customs restrictions preventing our unloading two tankers into one line. Grave doubts were also expressed about our ability to get necessary permit to lay another crude line across the City's airport property. All things considered, Mr. Jones still feels we should have the discharge rate at 5,000 barrels per hour, but is willing to yield to Mr. Story's point about commencement of demurrage time. This seems to me to be a reasonable compromise, and I hope you will agree.

Our Refinery people also tell us that while they will do the best possible, the loading rate for all products except Kerosene shall be 4,000 barrels per hour at our Philadelphia Refinery (Page 18, Item 18(b)).

The above explains why certain applicable items in the attached draft do not tie in completely with Mr. Story's memorandum to you dated September 26th. You will also note we have limited the size of tankers for loading crude oil to not less than T-2 size, which we believe you will agree is reasonable.

In order to save time, I have not waited to obtain from our Operating and Refining Departments daily maximum loading quantities of various products that can be delivered into tank cars and tank trucks for your account at our Philadelphia Refinery in existing facilities. We hope to have these available very shortly for final discussion with you.

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Exhibit 24, Annexed to Affidavit of George H. Hill, Jr.

PETROLEUM AND ITS PRODUCTS

GULF OIL CORPORATION

17 BATTERY PLACE · NEW YORK 4, N. Y.

DIVISION SALES OFFICE
E. WALDO EMERSON
DIVISION GENERAL MANAGER

SUCCESSOR TO GULF REFINING COMPANY

October 2, 1952

Mr. George H. Hill, Assistant to the President
Cities Service Company, Inc.

I believe you will find the attached draft is in line with our recent talks, and I will be glad to have your comments as soon as possible.

Yours very truly,

R. M. Bartlett
Vice President

RMB:lrs

11284

EXHIBIT 25, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

PETROLEUM AND ITS PRODUCTS

GULF OIL CORPORATION

GULF BUILDING · PITTSBURGH 30, PA.

R. M. BARTLETT
VICE PRESIDENT

October 7, 1952

INCLUDING SUBSIDIARY
GULF REFINING COMPANY

Mr. Geo. H. Hill, Jr.
Assistant to the President
Cities Service Company, Inc.
Sixty Wall Street
New York 5, New York

Dear Mr. Hill:

Supplementing my letter of October 2nd, I am enclosing herewith rewrite of Item 17 covering daily maximum loading quantities of various products that can be delivered in tank cars and tank wagons for your account at our Philadelphia refinery in existing facilities. Will you kindly substitute these sheets for the ones in the draft dated September 26th which I delivered to you Friday, October 3rd.

I expect to be in New York tomorrow and will contact you.

Yours very truly,

R. M. Bartlett

Vice President

RMB:red
Attachment

Forwarded to Mr. Hill 10/8/52.

11285

EXHIBIT 26, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

October 17, 1952

Mr. R. M. Bartlett, Vice President
Gulf Oil Corporation
Gulf Building
Pittsburgh, Pennsylvania

Dear Mr. Bartlett:

Reference is made to your letter of October 2 with which you enclosed copies of draft dated September 26, 1952 of the proposed crude oil purchase contract covering Kuwait crude oil.

The following comments refer to this draft:

1. Article 2

Cities has not received copies of the documents referred to in the last sentence. It is assumed that these will be furnished us shortly in order that we may study their provisions in relation to their effect upon the contract.

2. Article 11

The last sentence in the second paragraph of this Article should include kerosene unless that product is covered by "distillate fuels".

3. Article 12

In the 6th line of the definition of Factor A add the words "from crude delivered during the previous month" immediately following the word "delivered" and prior to the words "to Cities".

In the 8th line of the definition of Factor B eliminate the parenthetical expression "(including war risk insurance)" and substitute in lieu thereof "(including war risk insurance if carried by Gulf on its domestic coastwise tankers)". The question is also raised as to whether war risk insurance on cargo is proper in this provision since it is eliminated in Factor C.

In Factor B, beginning on the 13th line, provision is made for an allowance for evaporation losses of .4 of 1% of Factor A. Our experience on evaporation losses for the past 3½ years has been

Exhibit 26, Annexed to Affidavit of George H. Hill, Jr.

as follows: gasoline - .4 of 1%; kerosene - .1 of 1%; #2 fuel oil - .18 of 1%; #6 fuel oil - 0. The weighted average of these losses based on the percentages listed in Article 11 on Page 7 would be .21 of 1%. This figure should therefore be substituted for the .4 of 1% included in the present draft.

In the last sentence of the definition of Factor D on Page 13 add the words "such amount" immediately following the word "dividing".

In the definition of Factor E on Page 13 the amount of Factor E is automatically reduced on October 1, 1963. This is not satisfactory to Cities. It is felt that no specific date is necessary since the provision automatically takes effect when 65,152,500 barrels have been delivered. Any date used should not be earlier than April 1, 1964.

4. Article 17

This Article still provides for a charge of 5¢ per barrel for loading into tank cars, truck transports or tank wagons and 2¢ per barrel for loading into barges. These amounts are not agreeable to Cities. Gulf should be reimbursed only for the extra expense of loading into this type of transportation facilities over and above the expense which Gulf incurs in loading into tankers. Our operating people are convinced, based upon their own experience, that Gulf's extra out-of-pocket expenses will not amount to anything like the charges provided. The present draft provides for the loading of limited quantities only into these transportation facilities and it is understood that these are the amounts you can load without the installation of additional equipment. The charges suggested for loading these limited amounts into transport trucks or tank wagons would total $22,500 per month. We think it is obvious that this amount is far in excess of the expense Gulf would incur in extra manpower and other expenses incident to loading these quantities for Cities, from Gulf's existing facilities. A suggestion has been made that Cities' top operating man in this field get together with whoever you designate to try to come to some agreement on this.

5. Article 21

In the definition of Factor G on Page 21, insert a comma after the word "taxes" in the 9th line, strike the word "and" immediately following and add the words "and depreciation on a normal basis" after the word "facilities" in the 10th line.

11287

Exhibit 26, Annexed to Affidavit of George H. Hill, Jr.

6. Article 26

The last sentence in this Article as well as the last sentence in Article 27 have the effect of requiring Cities to pay additional taxes or assessments levied by the Shaikh of Kuwait or alternatively giving Gulf the right to suspend the operation of the agreement. In our opinion this is not an equitable provision. If Gulf's Kuwait crude is to be competitive with crude produced elsewhere, Gulf must assume taxes and other charges of this nature.

7. Article 28

This Article should be eliminated from the contract in its entirety. It is difficult to conceive of any charges, taxes or fees imposed in this country that would not eventually be reflected in the market prices of products. However, we know of no way to determine whether or not indirect taxes of various kinds are or are not reflected in the market price of products. In any event there can be no question that the prices which Cities is paying to Gulf under the contract are based on market prices in this country, and that is the basic principle of the contract.

8. Article 32

Insert the following words at the beginning of this Article: "Except as provided in the last paragraph of this Article 32".

9. Cities marketing division needs some #5 oil in this area and we understand you blend it up at Girard Point. Would it be satisfactory to you to include in the contract a provision for blending from 500,000 to 1,000,000 barrels a year of #5 out of the #6 and #2 which the contract provides for.

10. There is attached hereto memorandum from our Marine Department relating to changes which should be made in various provisions of the draft relating to marine operations.

Very truly yours,

Geo. H. Hill Jr.
Assistant to the President

Enc.

11288

EXHIBIT 26A, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

GRAND BASSA TANKERS, INC.
80 Broad Street
MONROVIA, LIBERIA

November 13, 1952

Counterpart 2 of 2 Counterparts

Newport News Shipbuilding
and Dry Dock Company
Newport News, Virginia

Attention: W. E. Blewett, Jr., Executive Vice President

Gentlemen:

Grand Bassa Tankers, Inc., a Liberian Corporation, accepts the bid contained in your letter to us dated October 15, 1952, and authorizes and requests you to construct for it, for Liberian registry, four (4) 38,000 ton, single screw, bulk oil tankers on the terms and conditions set forth in this letter.

The vessels shall be constructed in accordance with specifications entitled "Detail Specifications for the Construction of a Steel Single Screw Vessel for Carrying Bulk Oil for Grand Bassa Tankers, Inc.", dated September, 1952, and Newport News Plans Nos. 194533; 194534; 194535; 199552; 199553; and 199580.

The price of each vessel shall be eight million one hundred fifty thousand dollars ($8,150,000.), herein referred to as the basic purchase price, subject to escalation, using April 1952 as the base month for labor and material prices.

Exhibit 26A, Annexed to Affidavit of George H. Hill, Jr.

This order and your acceptance thereof is subject to our joint execution of a mutually satisfactory detailed construction contract and to the prior approval, on or before November 30, 1952, by the U. S. Maritime Administration of the construction of the vessels for Liberian registry. We understand that if such approval shall have been obtained on or before such date the first vessel will be delivered to us on or before June 15, 1954, the second vessel on or before August 15, 1954, the third vessel on or before October 15, 1954, and the fourth vessel on or before December 15, 1954.

We are anxious to execute a detailed construction contract as soon as possible and are prepared to meet with you at your convenience to discuss the provisions thereof. We understand that such contract will provide for the payment by us of two per cent (2%) of the basic purchase price of the four vessels upon the execution of the contract or shortly thereafter.

If you agree to the foregoing, please sign the form of acceptance on the enclosed counterpart of this letter. Please then return such counterpart to us.

Very truly yours,

Grand Bassa Tankers, Inc.

By _____
President

The foregoing is hereby accepted
as of the date thereof

Newport News Shipbuilding
and Dry Dock Company

By _____
Executive Vice President

11290

EXHIBIT 27, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

MEMORANDUM

RE: Summary of Proposed Gulf Contract — December 16, 1952

1. Covers purchase of 21,000 barrels a day of Kuwait crude, with an option to buy an additional 30,000 barrels a day.

2. Term of contract 12 years.

3. Although contract is in form of a crude purchase contract, actually it is a purchase of products at Gulf's Philadelphia refinery.

4. Price of products equals Gulf Coast current prices plus transportation to Philadelphia less 25 cents per barrel.

5. Cities will be importer and will supply transportation for the 21,000 barrels per day of Kuwait crude necessary to make the products.

6. Cities will be allowed costs of transportation, including operating costs, interest and depreciation on tankers at normal rate. In addition Cities is allowed further amortization sufficient to pay out in full tanker costs in 8½ years.

7. Gulf has a kick-out provision allowing them to suspend the contract if:

(a) Value of products on Gulf Coast plus transportation falls below the price of West Texas crude plus 70 cents per barrel. (Present value of products on Gulf Coast plus transportation is approximately $3.80 per barrel. Present price of West Texas crude plus 70 cents per barrel is $3.12.)

(b) The net payment to Gulf for crude plus processing falls below $1.50 per barrel. However, if they should suspend based on this provision, they must continue to sell us crude as cheaply as they sell to anyone else.

8. At the end of 5 years we can cancel the processing portion of the contract if we so desire and build our own refinery.

9. Our people estimate that, assuming present day prices for products and a 12-year depreciation on new refining facilities constructed by Cities on the East Coast, Cities would have to obtain Middle East crude at $0.769 per barrel to equal the margin reflected in the Gulf contract. If product prices drop to 1949 level, Cities would have to obtain Middle East crude at $0.352 per barrel to maintain such margin.

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10. Gulf contract in effect requires Gulf to absorb any differential resulting from increases in foreign tanker operating costs as compared with domestic tanker operating costs. This would be a substantial advantage if union activity ultimately requires payment of union scale on foreign tankers. The same thing is true of increases in import duties and like charges.

EXHIBIT 28, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

AGREEMENT
between
GULF EXPLORATION COMPANY
GULF OIL CORPORATION
and
CITIES SERVICE OIL COMPANY (PA.)
dated
January 26,, 1953

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AGREEMENT

This Agreement, dated the 26th day of January, 1953, by and between Gulf Exploration Company, a Delaware corporation (herein called "Gulfex"); Gulf Oil Corporation, a Pennsylvania corporation (herein called "Gulf"); and Cities Service Oil Company (Pa.), a Pennsylvania corporation (herein called "Cities"), witnesseth;

That for and in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. Beginning on January 1, 1955, or prior thereto pursuant to Article 25 hereof, Gulfex shall sell and deliver to Cities and Cities shall buy and receive from Gulfex at a loading port or ports in Kuwait, quantities of Kuwait crude oil sufficient to enable Cities to deliver into the United States of America a total of 92,043,000 net barrels of 42 U.S. gallons of such crude oil. (As used herein "barrel", "net barrel", or "net quantity" means the quantity corrected to 60° F., in accordance with United States Department of Commerce, N.B.S., Circular C-410, issued March 4, 1936, or later revisions thereof, and after deduction of water and sediment determined by A.S.T.M. Method D-96). Cities shall, not later than January 1, 1955 and continuing throughout the life of this Agreement, furnish sufficient ocean tankers of not less than 12,000 D.W.T. capacity to receive the Kuwait crude oil in bulk in approximately equal annual and monthly quantities equivalent to approximately 21,000 net barrels per calendar day; and shall transport the crude oil from Kuwait, import it into the United States, pay the import duties as well as any other taxes, customs overtime unlading, and brokers' fees related to imports which may be due thereon, and except as provided in Article 21 hereof, shall deliver said crude oil into Gulf's Philadelphia, Pennsylvania, crude oil storage tanks at the expense of the tanker but at the risk and peril of the tanker only so far as the tanker's permanent hose connections. As used herein "Gulf's Philadelphia, Pennsylvania, crude oil storage tanks" means crude oil storage tanks in the Philadelphia area connected to Gulf's Philadelphia refinery by pipeline.

2. The Kuwait crude oil to be purchased by Cities hereunder shall be delivered by Gulfex out of oil being produced from a concession in Kuwait by Kuwait Oil Company Limited, or its successors in interest, as agent for Gulf Kuwait Company (a Delaware corporation and a wholly-owned subsidiary of Gulfex) and D'Arcy Kuwait Company under the terms of that certain concession contract dated December 23, 1934, by the Shaikh of Kuwait in favor of Kuwait Oil Company Limited (which has since changed its name to D'Arcy Kuwait Company Limited), as amended December 30, 1951, which company assigned an undivided one-half interest to Gulf Kuwait Company on November 30, 1951. It is specifically understood and agreed that Gulfex' obligations

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under this Agreement are subject to the continued existence of said concession contract, as amended, throughout the period of this Agreement and are also subject to the terms and conditions of that certain agreement dated December 11, 1952, between Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and Gulf Kuwait Company. Cities acknowledges that it has received a copy of the above-mentioned documents and is familiar with the terms of same.

3. Cities shall pay to Gulfex in U.S. currency for each net barrel of Kuwait crude oil of 31.0-31.9° gravity A.P.I. purchased hereunder a basic price of $1.40 per barrel and that price shall increase or decrease 2¢ per barrel for each degree or fractional degree increase or decrease in A.P.I. gravity above or below that range. The basic price of $1.40 per barrel shall remain in effect so long as the price quoted in the publication National Petroleum News for Arabian crude of 36.0-36.9° gravity A.P.I. at Ras Tanura, Saudi Arabia, is $1.75 per barrel and shall increase or decrease above or below $1.40 per barrel by the same amount as the price quoted in National Petroleum News for Arabian crude oil of 36.0-36.9° gravity A.P.I. at Ras Tanura, Saudi Arabia, increases or decreases above or below $1.75 per barrel. If, during the period of this Agreement, the publication of National Petroleum News is discontinued, or if publication therein of a price quotation for Arabian crude at Ras Tanura, Saudi Arabia, is discontinued, or if either party is of the opinion that the price for Kuwait crude oil as determined above does not reflect the commercial value of such crude oil in that it does not bear a fair relationship to other world-wide crude oil prices, said party may, by giving written notice to the other party, require the method of determining the basic price for Kuwait crude oil hereunder to be reviewed. Within seven days after receipt of such notice the parties shall consult together with a view to selecting some other source of regularly published prices or with a view to agreeing upon the principles to be adopted in arriving at a revised basic price. If within 30 days from the date that the foregoing notice was given the parties are unable to agree, the question shall be referred to arbitration under Article 29 of this Agreement. During any period of consultation or arbitration the basic price to be used shall be that in effect immediately prior to the time the notice was given by one party to the other, but the invoices for which such price is used shall be tentative and shall be adjusted when agreement is reached or when a determination is made by arbitration so that such basic price as finally determined shall be retroactive to the date the notice was given.

Gulfex shall invoice Cities and Cities shall pay such invoices without discount within 10 days of receipt thereof, for each cargo of Kuwait crude oil lifted by Cities when telegraphic advice is received by Gulfex stating the tanker's name, loading

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port, loading date, gravity of crude oil, and net barrels loaded, based on shore tank gauges.

4. Cities shall furnish a two-month schedule of estimated arrivals at the loading port, with current revisions, and shall, not less than 20 days before the expected date of arrival of each tanker at the loading port, notify in writing Mr. R. M. Bartlett, Post Office Box 1166, Pittsburgh 30, Pennsylvania, United States of America, (or such other person at such address or such other address in the United States of America as Gulf and Gulfex may from time to time by notice in writing to Cities substitute for the purposes of this Article) the name of the tanker, the approximate quantity of the crude oil to be lifted by the tanker, and the expected date of its arrival at the loading port, and at Philadelphia, together with full instructions regarding such tanker, and the making up of the Bills of Lading and other necessary documents. Cities shall arrange for its tankers to report their expected hour of arrival to Gulfex' agent at Kuwait 72 hours before arrival. At least 48 hours prior to the arrival at Philadelphia of any tanker carrying the Kuwait crude oil sold under this Agreement, Cities shall notify Gulf's Marine Department agent at Gulf's refinery at Girard Point, Philadelphia, Pennsylvania, of the expected time of arrival of such tanker.

5. Gulfex shall cause to be provided at the loading port or ports, tanker berths, pipe lines, shore tanks, and loading hoses and such other loading facilities sufficient to deliver the crude oil on board tankers to the tanker's permanent hose connection. No tanker furnished by Cities shall be required to load a particular cargo at more than one loading port. Gulfex' agent shall have the right to shift the tanker from one berth to another berth at the loading port. If such shifting is done to benefit the loading terminal, the resulting expense shall be for account of Gulfex, and the time consumed shall be counted as actual time required for loading in computing demurrage. If it is necessary to shift the tanker off the berth because of breakdown of machinery or other deficiency of the tanker, the resulting expense shall be for the tanker's account and the time consumed shall not be counted as actual time required for loading in computing demurrage and the tanker shall lose her regular turn at the berth. The title to the crude oil delivered into each tanker shall pass to Cities upon delivery at the tanker's permanent hose connection and Gulfex' risk and peril for the crude oil shall cease at that point; provided, however, that any loss or damage to the crude oil during loading caused through fault of the tanker shall be for Cities' account. Tankers nominated by Cities shall comply with the applicable port regulations and Cities shall be responsible for all port charges.

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6. When the tanker has arrived at the loading port and is ready to load, a notice of readiness shall be tendered by the captain or Cities' agent to Gulfex' agent by mail, telegraph, wireless or telephone.

7. Subject only to priority of arrival of other tankers awaiting loading at the loading port, Gulfex shall, before the expiration of a period of six hours after the giving in respect of any tanker of the notice of readiness to load under Article 6 of this Agreement, provide such berth at the loading port for the loading of the crude oil as to permit ocean-going tankers having a maximum loaded draft not exceeding 38 feet to lie safely and always afloat with the necessary access thereto, and commence the loading of the crude oil on such tankers; provided that, if by reason of such prior arrival as aforesaid, such berth cannot be provided or the loading cannot be commenced before the expiration of the said period, such berth shall be provided and the loading shall be commenced as soon as possible. If, after notice of readiness, any tanker is unable, through no fault of the terminal, to start loading at the designated time, she shall await the loading of the tanker or tankers taking her place.

8. The allowed time for loading each tanker provided by Cities hereunder shall be such time as is necessary, weather permitting, to load the tanker a full and complete cargo at the rate of 7,500 barrels per hour, unless the tanker is less than 28,000 DWT capacity in which case the allowed time for loading shall be 36 hours except as provided in Article 16 hereof. The loading of a tanker shall be continuous and Cities agrees to cause all tankers supplied by it to receive the crude oil at the fastest rate permitted by the tanker's equipment. If the loading of a tanker is not completed within her allowed time, Gulfex shall pay for the excess of the actual time required for loading over the allowed time by way of demurrage as provided in Article 16 hereof. Determination of the actual time required for loading shall commence either at the expiration of six hours after tender of notice of tanker's readiness to load, or immediately upon tanker's arrival in berth (i.e., finished mooring when at a sea-loading terminal and all fast when tanker is to be loaded alongside a wharf) whichever first occurs; but if the tanker's condition or facilities do not permit loading, the time so lost shall not be counted as actual time required for loading, nor shall time required for discharge of ballast be so counted. Likewise, if any governmental authority or port regulations prohibit loading on the Sabbath or any holiday or any other time, time so lost shall not be counted as actual time required for loading. If shifting of the tanker is done as provided in Article 5 hereof, the time consumed shall be included or excluded as provided therein.

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9. The quantity and quality of crude oil delivered to Cities' tankers from shore tanks shall be determined by, or on behalf of, Gulfex in the manner customary at the loading port at the time of loading. Cities' representative will be allowed every facility available for participating in the determination of quantities and qualities. If Cities' representative shall fail to participate in the determination of the quantity and quality of the cargo by the time the captain declares his readiness to load, Gulfex shall proceed with the loading of the tanker, and the quantity and quality as ascertained and certified by Gulfex' representative shall be accepted by Cities as the Bill of Lading and invoice quantity and quality.

10. Gulfex shall supply bunkers for tankers nominated by Cities at the loading berth at the market price on date of loading. In the event a shift is necessary to another berth for the purpose of loading bunkers the time of shifting and the time required to take aboard the bunkers shall count as used loading time.

11. Cities shall arrange to deliver the Kuwait crude oil, or such other crude oil as provided in Article 20, in approximately equal monthly quantities into Gulf's Philadelphia, Pennsylvania, crude oil storage tanks at the expense of the tanker but at the risk and peril of the tanker only so far as the tanker's permanent hose connections, and Gulf shall provide tankage to receive such crude oil. Gulf shall process the Kuwait crude oil and shall deliver to Cities products, meeting Gulf's Philadelphia refinery manufacturing specifications at the time of delivery for Gulf branded products of the highest quality, from each net barrel of Kuwait crude oil, as follows:

Products	Volume Percent	Quantity U.S. Gals. per Net Bbl. of Crude Oil
Premium Gasoline	13.2	5.54
Regular Gasoline	31.3	13.15
Kerosene	5.0	2.10
No. 2 Fuel Oil	17.1	7.18
No. 6 Fuel Oil	33.4	14.03
Total products to Cities	100.0	42.00

If requested by Cities, Gulf shall add to the products to be delivered to Cities additional T.E.L. or other additives, provided such T.E.L. or other additives are furnished by Cities and provided further that Cities shall reimburse Gulf for any additional expenses incurred by Gulf in complying with Cities' request, including the capital and

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operating costs of any additional facilities which may be necessary. Gulf shall have a reasonable time to comply with any such request by Cities. Cities agrees to move the products from Gulf's tanks at such times and in such quantities as not to require Gulf at any time to hold for Cities' account more than 20 days' production of gasolines, 30 days' production of kerosene, No. 2 fuel oil and No. 6 fuel oil, due Cities from the processing of the crude oil delivered by Cities.

Upon giving Gulf six months' notice in writing, Cities shall have the right, effective on the first day of a calendar month, to increase or decrease the quantity of each of the products listed in the above table by not more than 25%, but no single change in the quantity of a product, as compared with the quantity of that product in effect during the immediately preceding period, shall exceed 25% of the quantity of that product shown in said table. The total quantity of products to be taken from each net barrel of crude oil can in no event be more or less than 42 U.S. gallons nor can the quantity of any product ever be more or less than the maximum and minimum quantities shown below:

Product	Minimum Quantity U.S. Gallons Per Net Barrel of Crude Oil	Maximum Quantity U.S. Gallons Per Net Barrel of Crude Oil
Premium Gasoline	4.15	6.92
Regular Gasoline	9.86	16.44
Kerosene	1.58	2.62
No. 2 Fuel Oil	5.39	8.98
No. 6 Fuel Oil	10.52	17.54

When Cities has once elected to make a change in the volume of products which it requires, such change shall remain in effect for a period of not less than six months.

12. Cities shall pay Gulf, without discount and within 10 days of presentation of Gulf's invoice, for the processing hereunder an amount determined by multiplying the number of net barrels of crude oil delivered during the preceding calendar month into Gulf's Philadelphia, Pennsylvania, crude oil storage tanks, as determined from Custom House receipt, by an amount per barrel found by the formula (A + B) minus (C + D + E + F). The factors in the formula are defined as follows:

Factor "A" is the value on the United States Gulf Coast of the 42 gallons of products which Gulf has agreed to deliver to Cities from each net barrel of crude oil delivered by Cities into Gulf's Philadelphia crude oil storage tanks in the preceding month. Such value shall be determined at the end of each month by

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applying to the quantity of each such product delivered or to be delivered to Cities from crude oil delivered during the previous month the daily average for the month of Platt's Oilgram low quotations for Gulf Coast Cargoes Domestic, All Ports, for the respective products. (As an example, such product prices for the month of May 1952 were those shown in Exhibit "A" attached. However, if a quotation does not appear for the gasoline of the octane number being delivered, then the price for such gasoline shall be found by interpolation between the price quoted for the next higher and next lower octane numbers or by interpolation and extrapolation if there is not a higher octane number quoted. For example if 93 octane number gasoline is being delivered and prices for 92 and 94 octane numbers are being quoted the price to be used shall be the mean of the 92 and 94 octane prices. If, however, 94 octane is not quoted but 90 and 92 octanes are quoted, then one-half of the difference between the 90 and 92 octane prices shall be added to the 92 octane price to determine the price for 93 octane.) If, during the period of this Agreement, the publication of Platt's Oilgram is discontinued, or if publication therein of price quotations for any of the products to be received by Cities under this Agreement does not appear (except as provided above) or is discontinued, or if either party is of the opinion that the prices therein published do not or have ceased to reflect the commercial value of any particular product or products in that they do not bear a fair relationship to commercial prices for comparable products, said party may, by giving written notice to the other party, require the method of valuing products for the time being in force under this Article to be reviewed either generally or as respects any particular product or products. Within seven days after receipt of such notice the parties shall consult together with a view to selecting some other source of regularly published prices or with a view to agreeing upon the principles to be adopted in arriving at the commercial value of the product or products in question which do, in the opinion of both parties, provide an indication of the commercial value of the product or products in question. If within 30 days from the date that the foregoing notice was given the parties are unable to agree, the question shall be referred to arbitration under Article 29 of this Agreement. During any period of consultation or arbitration the values to be used for the purpose of determining Factor "A" shall be those in effect immediately prior to the time the notice was given by one party to the other, but the invoices for which such values are used shall be tentative and shall be adjusted when agreement is reached or when a determination is made by arbitration so that such price as finally determined shall be retroactive to the date the notice was given.

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Factor "B" is the calculated cost of transportation by tanker from the Gulf Coast to Philadelphia of the 42 gallons of products which Gulf has agreed to deliver to Cities at Philadelphia from each net barrel of crude oil. This cost shall be determined on the assumption that such products would be transported in an 18,000 DWT, 15 knot, steam turbine-driven products tanker constructed for coastwise service in a United States' yard at a cost of $279 per DWT; that such tanker is operated with a normal crew paid at prevailing salary and wage rates; that insurance (including war risk insurance if carried by Gulf on its domestic coastwise tankers) is carried on tanker, crew and cargo; that Bunker "C" Fuel is procured at the low of prevailing Gulf Coast market prices as quoted in Platt's Oilgram for ships' bunkers; that normal costs are incurred for food, supplies, and maintenance; that the tanker is depreciated on a 20-year basis down to 2½% salvage value; that an interest cost is incurred of 3½% per annum on one-half of said original investment cost; and that handling and evaporation losses of three-tenths of one per cent of the sum of Factors "A" and "B" are included in such costs. Exhibit "A" shows the application of Factor "B" in arriving at product values at Philadelphia and Exhibit "B", attached, shows the May 1952 calculated costs to which Gulf and Cities have agreed as Factor "B". On or before the date of commencement of deliveries under this Agreement, Gulf and Cities shall revise Factor "B" to give effect to conditions prevailing at that time and such revised costs shall be the original effective rate and shall remain in effect until changed as hereinafter provided. If the parties are unable to agree on the original effective rate, the same procedure shall be used as is set out in this Article for the determination of a new rate. If at any time and from time to time either party is of the opinion that the cost of transportation from the Gulf Coast to Philadelphia, determined as specified herein, is either 10% more or 10% less than the then effective rate it may notify the other party in writing. Within seven days after receipt of such notice the parties shall consult together in an effort to agree on a new rate to be used based upon any changes that may have occurred in the operating expense items. If within 30 days after the foregoing notice has been given, the parties are unable to agree as to whether a new rate is indicated, or upon the amount of such new rate, then the entire matter shall be referred to arbitration under Article 29 of this Agreement. In arriving at their decision the arbitrators shall use the same assumptions and principles set forth in this Article. During any period of consultation or arbitration the rate in effect immediately prior to the time the notice was given by one party to the other shall be used but the invoices

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for which such rates are used shall be tentative and shall be adjusted when a new rate is agreed or determined by arbitration so that such new rate shall be retroactive to the date the notice was given. For calculation purposes, it is agreed that the following conversion factors shall be used:

One ton equals 2,240 pounds.
One ton equals 8.7 bbls. of Premium Gasoline, of 42 U.S. gals.
One ton equals 8.7 bbls. of Regular Gasoline, of 42 U.S. gals.
One ton equals 7.9 bbls. of Kerosene, of 42 U.S. gals.
One ton equals 7.5 bbls. of No.2 Fuel Oil, of 42 U.S. gals.
One ton equals 6.5 bbls. of No.6 Fuel Oil, of 42 U.S. gals.

Factor "C" is an allowance per barrel for cost of transportation of Kuwait crude oil from the loading port in Kuwait to Philadelphia, exclusive of depreciation, amortization and interest on investment on the tankers involved in such transportation. This allowance shall be equal to the average of the costs incurred (except that one-way bunkers shall be lifted at Philadelphia and the Persian Gulf and valued for this purpose at the going prices) during the 12-month period prescribed in this Article, by Gulf and by its subsidiaries and affiliates on tankers which are owned by those companies and which are engaged in transporting crude oil from Kuwait to Philadelphia, whether for those companies or for others to whom the tankers are chartered. It shall include only the costs of tankers operating under a foreign flag and which are of 28,000 to 33,000 DWT. Such costs shall not include any amount of depreciation or amortization of the tankers nor shall it include any interest on the investment therein. Such costs shall include the cost of normal losses representing the difference between the net quantity loaded at Kuwait and the net quantity delivered at Philadelphia on all cargoes which reach Philadelphia and such difference shall be valued for this purpose at the average price used in Factor "F" hereof, as defined in this Article, for the month in which the particular cargo involved was delivered at Philadelphia. War risk insurance on the tankers and crews, if carried by Gulf, shall be included in these costs. The allowance for the purpose of Factor "C" shall be reduced to a per barrel basis on the basis of net barrels which such tankers could have delivered to Philadelphia within the calendar year. Exhibit "C", attached, shows the average cost incurred by Gulf, its subsidiaries and affiliates, for the 12-month period covering the last six months of 1951 and the first six months of 1952. Gulf shall furnish Cities, within 60 days after January 1 and July 1 of each year, with a

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similar breakdown of its costs as of each January 1 and July 1 based on the preceding 12 months' experience and the total of such revised costs on a per barrel basis shall be used as Factor "C" for the ensuing six months beginning with March 1 and September 1, respectively.

Factor "D" is the U.S. import duty and/or other taxes, customs overtime unlading, and brokers' fees related to imports payable by Cities on the net quantity of crude oil delivered under this Agreement into crude oil storage tanks in the United States during the preceding month. This amount shall be reduced to a per barrel basis by dividing such amount by the net barrels so delivered in the preceding month.

Factor "E" is an amount of $.9883 per net barrel of crude oil delivered by Cities under this Agreement into crude oil storage tanks in the United States during the preceding month; provided, however, that this amount shall be reduced to $.6187 per barrel on April 1, 1964 or when a total of 65,194,500 net barrels of crude oil have been delivered by tankers supplied by Cities hereunder, into Gulf's Philadelphia crude oil storage tanks and into the crude oil storage tanks of a refinery substituted by Cities if the option in Article 21 is exercised, whichever first occurs. Provided, however, that if by reason of force majeure (as defined in Article 31) or by reason of suspension of this Agreement under Articles 26, 27 or 28 hereof Cities is prevented from delivering 65,194,500 net barrels of crude oil by April 1, 1964 as aforesaid, then said date of April 1, 1964 shall be postponed one day for each 21,000 barrels the delivery of which has been so prevented by force majeure and/or by such suspension; or that if, in accordance with Article 25 hereof, deliveries of crude oil by Cities to Gulf at its Philadelphia refinery are made in tankers supplied by Cities (but not in those supplied by Gulf) during the interim period prior to January 1, 1955, then the above-mentioned date of April 1, 1964 shall be changed to one day prior to that date for each 21,000 net barrels of crude oil delivered by Cities in tankers which Cities supplies during the interim period prior to January 1, 1955.

Factor "F" is the weighted average price per barrel paid by Cities to Gulfex under Article 3 hereof for the particular cargoes of crude oil delivered by Cities in that month to Gulf or to a refinery substituted by Cities if the option in Article 21 is exercised.

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13. When the tanker has arrived at the discharge port of Philadelphia and is ready to discharge, notice of readiness shall be tendered by the captain or Cities' agent to Gulf's Marine Department agent at Gulf's refinery at Girard Point, Philadelphia, by letter, telegraph, wireless or telephone, such notice not to be given until after the tanker has been cleared by Customs. Subject to the priority of arrival of other tankers awaiting discharge at the discharge port, Gulf will either provide a berth in the Delaware River, Philadelphia area, where there will be 35 feet depth of water at average mean low water or will provide any necessary lighterage from the recognized anchorages on the Delaware River if such 35 feet depth of water at average mean low water is not available. Any such necessary lighterage shall be at the expense, risk and peril of Gulf. If, by reason of such prior arrival as aforesaid, such berth cannot be provided or the discharge cannot be commenced, then such berth will be provided and the discharge shall be commenced as soon as possible. If, after notice of readiness, any tanker is unable, through no fault of the terminal, to start discharge at the designated time, she shall await the discharge of the tanker or tankers taking her place. The tankers nominated by Cities shall comply with the applicable port regulations and Cities shall be responsible for all port charges. The tanker shall have free wharfage or dockage.

14. Where, by reason of ships' purposes or deficiencies, a tanker is unable to discharge oil for 24 consecutive hours at the rate of 7,500 barrels an hour, Cities shall immediately move such tanker off her berth prior to completion of discharge. If Cities shall fail to move such tanker, then Gulf shall have the right to do so and such time lost shall not be counted as actual time required for discharge in computing demurrage. In such event Gulf shall immediately advise Cities and if requested to do so by Cities shall use all reasonable endeavors to complete the discharge of the tanker if this can be accomplished with reasonable expedition. Any additional expenses incurred by Gulf as a result thereof shall be borne by Cities.

15. The allowed time for unloading each tanker provided by Cities hereunder shall be such time as is necessary, weather permitting, to unload the tanker at the rate of 7,500 barrels per hour against a maximum back pressure of 100 pounds per square inch (and Gulf represents that it will provide facilities to receive the crude oil at that rate under such conditions), unless the tanker is less than 28,000 DWT capacity in which case the allowed time for unloading shall be 36 hours except as provided in Article 16 hereof. The unloading of a tanker shall be continuous and Cities agrees to cause all tankers supplied by it to unload crude oil at the fastest rate permitted by its equipment. If the unloading of a tanker is

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not completed within her allowed time, Gulf shall pay for the excess of the actual time required for unloading over the allowed time by way of demurrage as provided in Article 16 hereof. Determination of the actual time required for unloading shall commence either at the expiration of six hours after tender of notice of tanker's readiness to unload, or immediately upon tanker's arrival in berth (i.e., finished mooring alongside a wharf) whichever first occurs; but if the tanker's condition or facilities do not permit unloading, the time so lost shall not be counted as actual time required for unloading. Likewise, if any governmental authority or port regulations prohibit unloading on the Sabbath or any holiday or any other time, time so lost shall not be counted as actual time required for unloading. If shifting of the tanker is done as provided in Article 14 hereof, the time consumed shall be excluded.

16. For the purpose of calculating the amount of demurrage, if any, incurred in loading and discharging crude oil, to be paid to Cities hereunder by Gulfex and Gulf the actual time required for loading and discharge under Articles 8 and 15 hereof shall be added together and the allowed time for loading and discharge under the same Articles shall also be added together for each calendar year of this Agreement, except that tankers of less than 15,000 DWT capacity shall not be included in such calculations and any demurrage thereon shall be paid as hereinafter provided in this Article. If during any calendar year the actual time required for loading and discharge exceeds the allowed time, then Gulfex and Gulf shall share equally and pay to Cities for such excess hours an amount found by multiplying such excess hours at a rate per hour found by converting the rate allowed in the sum of Factors "C" and "g" of Article 12 hereof for that year minus 25¢ per barrel into a rate per hour appropriate to the weighted average size of the tankers in excess of 14,999 DWT capacity supplied by Cities in that year. Gulf shall calculate such appropriate rate and shall notify Cities thereof as soon as practicable after the end of each calendar year. If within 30 days of such notice by Gulf the parties have been unable to agree as to the rate and the amount of demurrage due to Cities, if any, then the matter shall be referred to arbitration under Article 29 of this Agreement. For the purpose of calculating demurrage on tankers of 12,000 to 14,999 DWT capacity the allowed time for loading and discharge shall be 168 hours, and if the actual time required for loading and discharge of such tankers exceeds 168 hours demurrage shall be paid at the rate included in the charter party covering the particular voyage but not exceeding $60 per hour.

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17. On or before the first day of each month, Cities shall give Gulf notice in writing (Att: Director of Supply, P. O. Box 1166, Pittsburgh 30, Pennsylvania) of the daily quantities and the manner of delivery of each product desired by Cities to be made available hereunder in the succeeding month. The products due Cities by Gulf hereunder shall be delivered at Cities' option by the following methods, or any combination thereof, subject to the conditions outlined below:

(a) On board tankers furnished by Cities at Gulf's Philadelphia refinery and/or into a pipeline provided by Cities to connect Gulf's Philadelphia refinery with terminal facilities owned or leased by Cities in the Philadelphia harbor area, at no additional charge to Cities; or

(b) On board barges or self-propelled vessels of less than 30,000-barrel capacity furnished by Cities at Gulf's Philadelphia refinery at an additional charge of 2¢ per barrel to Cities; or

(c) Into tank cars, truck transports, or tank wagons furnished by Cities at Gulf's Philadelphia refinery or at Gulf's bulk plant adjacent to said refinery at an additional charge of 4¢ per barrel to Cities; provided, however that:

(i) Up to December 31, 1959, Gulf shall not be required to make deliveries into transport trucks or tank wagons at delivery rates in excess of those set out in the table below and thereafter the quantities, if any, and the delivery charges therefor shall be agreed to by Gulf and Cities:

	Maximum Daily Quantities (24 hours per day loading)
Premium Gasoline	2,000 Barrels
Housebrand Gasoline	3,000 Barrels
Kerosene	500 Barrels
No. 2 Fuel Oil	4,500 Barrels
No. 6 Fuel Oil	5,000 Barrels

(ii) Gulf shall not be required to make deliveries into tank cars placed at Gulf's loading rack for Cities' account in excess of the quantities specified below:

	Maximum Number Tank Cars Per 8-Hour Day 5 Days Per Week
Premium & Housebrand Gasoline	10
Kerosene	5
No. 2 Fuel Oil	None
No. 6 Fuel Oil	None

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If, however, Cities guarantees in writing a minimum loading requirement of 16 tank cars per day of No. 2 Fuel Oil and/or No. 6 Fuel Oil for a period of not less than two consecutive months, Gulf agrees to man the loading rack for an additional eight-hour shift per day five days per week at the same charge.

The foregoing charges of 4¢ and 2¢ per barrel, respectively, are based on the estimated costs to Gulf of performing this service. Cities and Gulf recognize that changing conditions may cause variations in these costs. For that reason such charges for each month shall be determined by multiplying each of the rates by the ratio of the latest final "Commodity Index" at the date of execution of this Agreement (which it is agreed is 112.8) to the final "Commodity Index" published in the month preceding the month for which the charge is being determined. The "Commodity Index" shall be the latest final number of "All Commodities Other than Farm Products and Foods" as released by the United States Department of Labor, Bureau of Labor Statistics. The charges will be invoiced separately each month based on quantities so delivered in the prior month.

18. In the event of delivery of products on board tankers:

(a) Cities shall notify Gulf at least 14 days prior to the expected date of arrival at Philadelphia the name of the tanker and the approximate quantity of each product to be loaded, and shall currently advise Gulf of any changes therein. Cities shall notify Gulf's Marine Department agent at Gulf's refinery at Girard Point, Philadelphia, Pennsylvania, the expected time of arrival 48 hours in advance thereof, and Gulf shall provide a berth at Girard Point suitable for the loading of a T-2 or similar draft tanker.

(b) The provisions of Articles 5, 6, 7, and 8 except as otherwise provided herein shall apply with the substitution of the word "Gulf" for "Gulfex" and the word "products" for "crude oil", and except that the loading rate of 7,500 barrels per hour shall be 5,000 barrels per hour for all products except kerosene, for which a rate of 1,000 barrels per hour shall apply.

(c) For the purpose of calculating the amount of demurrage, if any, to be paid to Cities by Gulf under this Article, the excess of the actual time required for loading over the allowed time, if any, shall be determined for each calendar year of this Agreement. If during any calendar year the actual time required

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for loading exceeds the allowed time, then Gulf shall pay Cities for such excess hours an amount found by multiplying such excess hours at a rate per hour found by converting the rate allowed in Factor "B" of Article 12 hereof for that year into a rate per hour appropriate to the weighted average size of the tankers supplied by Cities in that year. Gulf shall calculate such appropriate rate and shall notify Cities thereof as soon as practicable after the end of each calendar year. If within 30 days of such notice by Gulf the parties have been unable to agree as to the rate and the amount of demurrage due to Cities, if any, then the matter shall be referred to arbitration under Article 29 of this Agreement.

19. The quantity and quality of petroleum products delivered hereunder to Cities shall be determined in the manner customary at Gulf's Philadelphia refinery at the time of loading. Cities' representative shall be allowed every facility available for taking measurements and temperatures and for participating in the making of tests for quality. If Cities' representative fails to participate at the time of delivery, then the quantity and quality as determined by Gulf shall be accepted by Cities as final.

20. Gulfex shall have the right to substitute for Kuwait crude oil, in whole or in part, any other crude oil it may have available and as to such substituted crude shall have the right to change the loading port from Kuwait to any other port upon giving Cities three months' notice in writing of its desire to make such substitution. In such event, Gulfex shall invoice Cities for such substituted crude oil at Gulfex' prevailing price at the loading port and that price shall be substituted in Article 3 hereof during the period the substitution continues. During such period of substitution the quantity of the products delivered to Cities in Philadelphia by Gulf shall remain unchanged as though there had been no interruption in the delivery by Cities of Kuwait crude oil to Gulf's Philadelphia refinery. Should the crude oil substituted require additional transportation facilities or costs, Gulfex shall be required to supply such additional transportation facilities and also compensate Cities for any additional transportation costs incurred by it as a result of such substitution. Contrariwise, should any savings result to Cities from the substitution Gulfex shall be credited with such savings. Should the substitution result in any surplus transportation capacity on the part of Cities, Gulfex shall provide other cargoes for such tankers and charter same from Cities on a basis that will yield Cities the same return as would have been produced if the surplus transportation had remained in service under this Agreement.

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21. Cities shall have the right to cancel, as of the end of any calendar year beginning with the calendar year 1959, that portion of this Agreement which relates to Gulf's processing the crude oil for the account of Cities, by giving Gulf not less than 18 months' advance written notice provided that Cities takes the crude oil to be processed in a refinery in the United States which Cities owns or in which its equity interest is such that its percentage of ownership when applied to the total refinery crude oil processing capacity equals or exceeds 21,000 barrels per calendar day. If Cities exercises this right, Cities shall nevertheless continue to purchase the Kuwait crude oil (or such other crude oil as Gulfex has substituted in accordance with Article 20 hereof, provided that, if Gulfex has substituted another crude oil, the price of such substituted crude oil shall at that time be equated with Kuwait crude oil and such equated value shall be used for the purpose of Article 3 hereof during the period the substitution continues) for the balance of the contract period. If necessary to equate a substituted crude oil with Kuwait crude oil for the purpose of this Article, it shall be done by taking into account the comparative values of the products which can be manufactured from the crudes involved in the same equipment available to Cities as well as the comparative manufacturing costs involved. If, within 30 days after the date on which it becomes necessary to equate the substituted crude oil with Kuwait crude oil, the parties have been unable to agree on the equated value, then the question shall be referred to arbitration under Article 29 of this Agreement. In arriving at their decision the arbitrators shall use the same assumptions and principles set forth in this Article. During any period of negotiation between the parties, or arbitration, the substituted crude shall be tentatively invoiced at the price in effect for Kuwait crude but the price shall be adjusted retroactively for the entire period when the equated price is determined by negotiation or arbitration.

In consideration of the right given to Cities to cancel the processing portion of this Agreement, Cities agrees that if such right is exercised it shall thereafter settle with Gulf monthly on the basis of applying to the net quantity of crude oil delivered into the crude oil storage tanks of the refinery which Cities has substituted for Gulf's Philadelphia refinery, the formula set out in Article 12 hereof, except that Factor "C" (as defined below) shall be added to the formula as an additional item to be deducted from the sum of Factors "A" and "B".

Factor "C" shall be Gulf's Philadelphia refinery average book cost per barrel (plus interest as provided for below) of processing Kuwait crude oil, for the calendar year at the end of which Cities exercises the foregoing option, in the new facilities comprising Gulf's Philadelphia refinery

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1953 expansion program, and used in the manufacture of the products delivered to Cities hereunder. These new facilities comprise a topping and vacuum, catalytic reforming, catalytic cracking, catalytic polymerization, and gasoline sweetening units and their utility and service auxiliaries. The costs shall include allocation of overhead and indirect expenses based on Gulf's usual practices in this respect as well as ad valorem taxes, interest at 3½% on one-half the original investment costs of these new facilities and depreciation on a normal basis. As soon as practicable after Cities has exercised the foregoing option Gulf shall advise Cities of the amount and details of calculation of Factor "G". If Cities questions such amount and the parties are unable to agree as to the correctness within 30 days, then the question shall be referred to arbitration under Article 29 of this Agreement. During any period of consultation or arbitration the amount to be used for Factor "G" shall be that notified to Cities by Gulf, but the invoice for which such amount is used shall be tentative and shall be adjusted when agreement is reached or when a determination is made by arbitration so that such amount as finally determined shall be retroactive to the effective date.

Factor "G", as determined above, shall remain in effect during the first calendar year during which Cities' option is in effect. Redetermination of Factor "G" shall be made at the end of that year and at the end of each year thereafter based on Gulf's costs as defined above during such year, and the redetermined cost shall be effective for the succeeding calendar year.

22. Cities shall have the right, exercisable not later than June 30, 1960, upon giving Gulfex not less than 18 months' notice in writing, to purchase during the remaining period of the Agreement for its own use and for a period of not less than five years, up to 30,000 additional net barrels per calendar day of crude oil f.o.b. Kuwait. The price per barrel for each cargo of such additional crude oil shall be determined by the use of the formula (A + B) minus (C + D + E + G), as defined in this Agreement, and for this purpose the factors in the formula shall be those effective during the calendar month immediately preceding that in which the particular cargo was loaded in Kuwait. If Cities has not exercised its option under Article 21, Factor "G" shall be determined for the purpose of this Article as if such option had been exercised.

23. The crude oil sold by Gulfex to Cities under Articles 21 and 22 hereof for processing in a refinery which Cities owns or in which it has an interest shall be not less than the average gravity and shall have not more than the average sulphur content of all Kuwait crude oil being produced at that

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time from the Kuwait Concession. The pricing arrangements under this Agreement have been based on Kuwait crude oil having an average gravity throughout the year of between 30.5° A.P.I. and 32.5° A.P.I. and an average sulphur content of between 2.25% and 2.75% by weight. If the annual weighted average gravity or sulphur content of any crude oil sold to Cities by Gulfex under Articles 21 and 22 hereof, is higher or lower than the limits set out above, adjustment of the price shall be agreed between the parties not later than 60 days after the end of the year. Failing agreement on the amount of the adjustment, the price shall be determined by arbitration as provided in Article 29.

24. In the event that Cities constructs its own refinery on the Eastern Seaboard, Cities shall give Gulfex the first refusal to supply for a period of not less than five years from the beginning of operations of such refinery, any crude oil which Cities may have to purchase to meet the requirements of such refinery; provided that such crude oil offered by Gulfex is of the type and quality readily usable in that refinery, and provided further that Gulfex equates the price of the crude oil it is offering with the cost and value of other crude oil available to Cities.

25. Cities agrees to purchase or charter for its own account such tankers of not less than 12,000 DWT capacity as may be necessary to start delivering by January 1, 1955 and to continue to deliver at all times thereafter during the life of this Agreement the full contract quantity of 21,000 net barrels per calendar day of Kuwait crude oil. Deliveries may start at any time after Gulf's expansion program at Philadelphia is completed, now estimated as December, 1953. Cities shall notify Gulfex and Gulf in writing not later than April 1, 1953 its anticipated schedule of Kuwait crude oil loadings and deliveries during the interim period beginning after the completion of Gulf's Philadelphia refinery expansion program and ending January 1, 1955. Gulf shall have the option to furnish for Cities' account such transportation or any part thereof as may be necessary to make possible deliveries up to 21,000 net barrels per calendar day during any part of the interim period at a charter rate equal to Factor "C" in the formula in Article 12 plus $.7383 per net barrel. Within 30 days after Cities advises Gulf of its anticipated schedule as above provided, Gulf shall notify Cities in writing of the amount of transportation, if any, it desires to furnish during such interim period and the estimated schedule of deliveries from such transportation. Cities shall be obligated to accept any transportation offered by Gulf in accordance with the foregoing. In the event Gulf elects to furnish transportation, thereby making more products for Cities' account during the interim period

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than would otherwise be available, Gulf shall furnish storage for such products for a reasonable period of operation; provided, however, that Gulf shall not be required to supply such additional storage for a period longer than 60 days after the end of the interim period.

26. (1) For the purpose of this Article only, the term "total net payment" shall mean either:

(a) the sum of Factors "A" and "B" in the formula in Article 12 for any month less (i) the cost per net barrel of crude oil attributable to future increases in the rates of existing income or other taxes or assessments imposed by the Kuwait Government, and (ii) the cost per net barrel of crude oil attributable to new taxes or assessments which may be imposed in the future by the Kuwait Government; or

(b) the amount per net barrel of crude oil which Cities would be required to pay in accordance with the provisions of Articles 3 and 12 hereof to Gulfex and Gulf for Kuwait crude oil to be purchased and processed under this Agreement, less (i) the cost per net barrel of crude oil attributable to future increases in the rates of existing income or other taxes or assessments imposed by the Kuwait Government, and (ii) the cost per net barrel of crude oil attributable to new taxes or assessments which may be imposed in the future by the Kuwait Government.

(2) If, at any time and from time to time when Gulf is processing Kuwait crude oil for Cities' account under the terms of this Agreement:

(a) the total net payment computed as set forth in paragraph (1) (a) above is less than the average of the posted prices at the well of Humble Oil & Refining Company, Magnolia Petroleum Company and The Texas Company (or such of them as post prices and if none do, then the average of the prices posted by companies other than the parties hereto) for purchases of 35.0-35.9° A.P.I. gravity West Texas (sour) crude oil in Crane, Ector, Upton and Winkler Counties, Texas (now $2.42 per barrel) as of the hour and date of commencement of loading of each cargo of Kuwait crude oil sold hereunder plus $0.70 per barrel; or

(b) the total net payment computed as set forth in paragraph (1) (b) above is less than $1.50 per net barrel;

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then by 90 days' advance written notice to Cities in which the occurrence of either of the events set forth in sub-paragraphs (a) or (b) of this paragraph is specified as the cause, Gulfex and Gulf may suspend the provisions of this Agreement as to future deliveries hereunder for such period or periods as Gulfex and Gulf may jointly elect, unless Cities, within 30 days after the receipt of such notice, offers in writing to increase the total net payment to Gulfex and Gulf by an amount equal to the deficiency causing the suspension. If the suspension results from an option exercised under sub-paragraph (a) hereof, such suspension period shall automatically terminate when the total net payment as defined in paragraph (1) (a) of this Article would, except for such suspension, in any month of the suspension period equal or exceed the average of the posted prices for West Texas (sour) crude as aforesaid plus $0.70 per barrel; but if the suspension results from an option exercised under sub-paragraph (b) hereof, such suspension period shall automatically terminate when said net payment as defined in paragraph (1) (b) of this Article, would, except for such suspension, be equal to or exceed $1.50 per net barrel.

(3) If in any calendar month during the term of a suspension period which is in effect by virtue of paragraph (2) (b) of this Article, Gulfex or Gulf sells and delivers Kuwait crude oil to others for importation into the United States at prices f.o.b. Kuwait lower than $1.50 per net barrel less Factor "G", as calculated under the provisions of Article 21 hereof (such sales being hereinafter in this Article called "below floor sales"), then Gulfex and Gulf, as the case may be, shall within 10 days after the end of that calendar month, give Cities written notice of all below floor sales during such month, including in such notice prices, volumes and delivery dates relating thereto, and Cities shall have the option with respect to each such month to require delivery and processing of Kuwait crude oil by Gulfex and Gulf in the manner and to the extent hereinafter set forth:

(a) for each month during said suspension period in which Gulfex or Gulf makes below floor sales, Cities may, by notifying Gulfex and Gulf within 10 days after receipt of notice of such sales, require Gulfex to deliver f.o.b. Kuwait and Gulf to process at Philadelphia, 630,000 net barrels of Kuwait crude oil. Each purchase of said quantity made by Cities pursuant to such an option is hereinafter referred to as a "suspension option purchase";

(b) for each net barrel of crude oil delivered f.o.b. Kuwait to Cities under a suspension option purchase, Cities shall pay to Gulfex the weighted average price

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per net barrel of all below floor sales in the month in respect of which Cities elected to make such a suspension option purchase, and shall pay to Gulf for the processing of each net barrel of such crude oil a sum equal to Factor "G";

(c) Cities shall be required to begin accepting delivery of each suspension option purchase, f.o.b. tankers in Kuwait, within 90 days from the date on which it exercises its option to make such purchase and to continue accepting such deliveries at the approximate average rate of 21,000 barrels per day. After termination of the suspension period Cities shall be entitled to receive delivery of all suspension option purchases, to which it became entitled by reason of options exercised prior to said termination, at the price for each provided in the preceding sub-paragraph (3) (b);

(d) if Cities exercises such option or options to make suspension option purchases, Cities shall be obligated for a period of 90 days after it has lifted the suspension option purchases to continue to take deliveries at an average rate of 21,000 net barrels per day and the applicable price shall be the price per net barrel for below floor sales received by or payable to Gulfex or Gulf during the last calendar month in which below floor sales were made prior to the date of each lifting, plus Factor "G"; provided, that if, the suspension period has automatically terminated before or during said 90-day period, the price for the quantities delivered after said termination shall be the formula price set forth in Articles 3 and 12;

(e) all terms and conditions of this Agreement not affected by special provisions contained in this Article shall apply to suspension option purchases. When the suspension period terminates Gulfex and Gulf shall promptly notify Cities and within 90 days thereafter all parties shall resume full performance of all terms and conditions of this Agreement; provided that, if a suspension option purchase is in the process of being lifted by Cities there shall be no interruption in deliveries.

27. (1) For the purpose of this Article only, the term "total net payment" means the amount per net barrel Cities would be required to pay, in accordance with the provisions of Articles 3 and 21 hereof or Article 22 if applicable, to Gulfex and Gulf for Kuwait crude oil delivered under this

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Agreement, less (i) the cost per net barrel of crude oil attributable to future increases in the rates of existing income or other taxes or assessments imposed by the Kuwait Government, and (ii) the cost per net barrel of crude oil attributable to new taxes or assessments which may be imposed in the future by the Kuwait Government.

(2) If Cities exercises its option to cancel that portion of the Agreement relating to Gulf's processing the Kuwait crude oil for Cities account as provided in Article 21 hereof, or purchases Kuwait crude oil under Article 22 hereof, and thereafter in either case the total net payment by Cities is less than $1.00 per net barrel, Gulf shall have the right at any time or from time to time during the period of this Agreement, after 90 days' advance written notice to Cities, to cause Gulfex to suspend this Agreement as to future Kuwait crude oil deliveries hereunder, for such period or periods as Gulf may elect, unless Cities, within 30 days of the receipt of such notice, offers in writing to increase the total net payment to Gulfex and Gulf by an amount equal to the deficiency. Such suspension period shall automatically terminate when the aforementioned net payment in this Article is $1.00 or more per net barrel. Provided, however, that if in any month during such suspension period, Gulfex or Gulf sells and delivers Kuwait crude oil to others for importation into the United States at prices f.o.b. Kuwait lower than $1.00 per net barrel, then the provisions of paragraph (3) of Article 26 shall apply, except that:

(a) "Below floor sales" as used in said paragraph (3) of Article 26 shall, for the purpose of this Article, be deemed to be sales to others below $1.00 per net barrel f.o.b. Kuwait; and

(b) Factor "C" shall not be included in the computation of the price Cities shall be required to pay for Kuwait crude oil purchased under the option herein contained.

28. War Risk Insurance is provided for in the determination of Factors "B" and "C" in Article 12 hereof. If Gulf incurs War Risk Insurance costs for inclusion in Factor "C", and these costs exceed by more than 10¢ per barrel the calculated premiums for such War Risk Insurance included in Factor "B", then Gulf shall bear the first 10¢ of said difference in costs but any additional difference in such costs, up to and including 50¢ per barrel, shall be borne equally by Gulf and Cities and Cities shall pay Gulf separately for such costs. If however said difference in War Risk Insurance costs exceeds 60¢ per barrel and Gulf refuses to assume the whole of such amount in excess of 60¢, then Cities may suspend liftings of crude oil hereunder during the period of Gulf's refusal; if

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such period of suspension or refusal continues for 24 successive months either party may cancel this Agreement by giving the other party written notice of cancellation within 30 days after the end of said 24-month period. If Cities loses the whole or part of a cargo of Kuwait crude oil by causes normally covered by War Risk Insurance and said loss was not so covered, Gulf agrees to replace such cargo loss in Kuwait without charge for the quantity of crude oil so replaced.

29. If, at any time, during the period of this Agreement a dispute shall arise between the parties hereto with reference to a matter specifically left for future review and determination in Articles 3, 12, 16, 18, 21, and 23 hereof, then failing agreement to settle it in any other way within the time prescribed in said Articles said matter in dispute shall be submitted to arbitration. One arbitrator shall be nominated by Cities and one arbitrator shall be nominated by either Gulf or Gulfex, depending upon which of the latter two parties is directly involved in the controversy. Each party shall nominate its own arbitrator within 30 days after written notice of a request so to do by the other party and the two arbitrators so nominated shall select a third arbitrator. If either party refuses or neglects to nominate an arbitrator within 30 days after being requested in writing to do so, the arbitrator nominated by the other party may decide the question involved and his decision shall be final and binding on the parties and there shall be no appeal therefrom except as provided by law. Should the two arbitrators nominated by the parties be unable or unwilling to agree upon a third within 10 days, the third arbitrator shall be designated by the Chief Justice of the Supreme Court of the Commonwealth of Pennsylvania. All decisions of a majority of the arbitrators shall be final and binding on the parties, and there shall be no appeal therefrom except as provided by law. The costs of the arbitration shall be borne equally by the parties thereto.

30. All written notices required to be given under the terms of this Agreement shall be given by letter, telegram or cablegram addressed to the respective parties at the addresses stated below except where otherwise specified herein, or to such other addresses as they shall respectively hereafter from time to time designate in writing to each other:

Gulf Oil Corporation
Post Office Box 1166
Pittsburgh 30, Pennsylvania

Gulf Exploration Company
Post Office Box 1166
Pittsburgh 30, Pennsylvania

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Cities Service Oil Company (Pa.)
Sixty Wall Street
New York 5, New York

The depositing in the mail of a letter properly addressed with adequate postage affixed or the filing of a prepaid telegram or cablegram with the telegraph office, followed by mailed copy of such telegram or cablegram, shall be considered notice to the addressee of the contents of such letter, telegram or cablegram.

31. Except as provided in the last paragraph of this Article 31, force majeure shall not release a party hereto from any of its obligations hereunder. Its existence shall (except with respect to matured obligations for the payment of monies due hereunder which it is agreed shall not be affected by force majeure) be effective only to suspend or hold in abeyance the performance by a party of its obligations and prevent such failure to perform, if and insofar as such failure is caused by force majeure, from constituting a breach of this Agreement during the period of such failure so caused. The party whose performance has been interrupted by force majeure shall use every reasonable means to resume full performance of this Agreement as promptly as possible.

As used in this Agreement, the term "force majeure" shall mean any cause or circumstance of whatever nature, whether pertaining to a party hereto or to its agents, contractors or subcontractors who are engaged in the construction of equipment or supplying material or equipment necessary in the performance of this Agreement, and which is not within the control and which cannot, by the exercise of reasonable diligence, be prevented or overcome by said party hereto; such as, but not limited to, acts of God; acts or orders of governmental bodies, de jure or de facto, prohibiting the performance of the Agreement or directly or indirectly prohibiting or restricting the furnishing or use of materials, equipment or labor required for such performance; strikes, lockouts or other labor and industrial disputes; arrests or restraints of governments, de jure or de facto; interruptions as a result of government, de jure or de facto, or court orders or orders of any regulatory body having or asserting jurisdiction; acts of the public enemy, wars, riots, sabotage, blockades, embargoes, or insurrections; inability to secure materials, equipment or labor because of priority or similar regulations of a government, de jure or de facto; epidemics, famines, landslides, hurricanes, lightning, earthquakes, fires, storms, floods, washouts or explosions; and breakage or accident to machinery or equipment.

Notwithstanding anything contained herein to the contrary, if any party hereto shall be prevented by force majeure from performing any of its obligations under this

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Agreement for a continuous period of 24 successive months or if said Agreement is suspended for a period of 24 successive months under Article 26, 27 or 28 hereof, then any party hereto may cancel this Agreement by giving the other parties hereto written notice of cancellation within 30 days after the end of said 24-month period.

32. This Agreement shall be construed and take effect in accordance with the laws of the Commonwealth of Pennsylvania. The parties hereto intend to be legally bound hereby.

33. No party hereto shall assign the whole or any part of its rights or obligations under this Agreement without the written consent of all of the other parties hereto; provided, however, that an assignment without written consent may be made by a party to a corporation owning, directly or indirectly, at least 51% of the voting stock of said party or to a corporation of which said party owns, directly or indirectly, at least 51% of the voting stock or to a corporation at least 51% of the voting stock of which is owned directly or indirectly by a corporation which owns directly or indirectly at least 51% of the voting stock of said party. Unless otherwise agreed in writing at the time, no assignment of rights or obligations under this Agreement shall relieve a party hereto from primary liability for the performance of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in triplicate, each of which shall be considered an original, by their duly authorized officers and their corporate seals to be hereunto affixed as of the day and year first above written:

GULF EXPLORATION COMPANY

Attest:

(SEAL)

/s/ L.J.McCord
Assistant Secretary

/s/ S. A. Swensrud
President

GULF OIL CORPORATION

(SEAL)
Attest:

/s/ L.J.McCord
Assistant Secretary

/s/ R. M. Bartlett
Vice President

CITIES SERVICE OIL COMPANY (PA.)

Attest:

(SEAL)

/s/ R.A.Cuthbertson
Secretary

/s/ J. A. Kelley
Vice President

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EXHIBIT "A"

Bulk Oil Value at Gulf Coast and Philadelphia of the Forty-Two Gallons of Products Gulf agrees to deliver to Cities for each net barrel of Kuwait Crude Oil delivered by Cities into Gulf's Philadelphia, Pennsylvania, crude oil storage tanks.

Basis: (1) Platts weighted average low quotation Gulf Coast Cargoes Domestic, All Ports for the month of May 1952.

(2) Transportation from the Gulf Coast to Philadelphia at $2.4435 per ton.

Products	Yield Gals. Per Bbl./ Crude	Platts Weighted Average Gulf Coast Low May 1952 (Factor "A") ¢/Gal.	Platts Weighted Average Gulf Coast Low May 1952 (Factor "A") ¢/Bbl. of Crude	Transportation Gulf Coast to Philadelphia (Factor "B") ¢/Gal.	Transportation Gulf Coast to Philadelphia (Factor "B") ¢/Bbl. of Crude	Bulk Oil Product Value at Phila. (Factors "A" + "B") ¢/Gal.	Bulk Oil Product Value at Phila. (Factors "A" + "B") ¢/Bbl. of Crude
Premium Gasoline (92 Octane)	5.54	12.0000	0.6648	0.6687	0.0370	12.6687	0.7018
Regular Gasoline (86 Octane)	13.15	11.0000	1.4465	0.6687	0.0879	11.6687	1.5344
Kerosene	2.10	9.0000	0.1890	0.7364	0.0155	9.7364	0.2045
No. 2 Fuel Oil	7.16	8.0000	0.5728	0.7757	0.0557	8.7757	0.6301
No. 6 Fuel Oil	14.03	4.1667	0.5846	0.8951	0.1256	5.0618	0.7102
T o t a l	42.00		3.4593		0.3217		3.7810

Note: (a) These values apply to cargo liftings of at least 30,000 barrels. For barge liftings product values will be increased by $0.02 per barrel of product and for tank car and tank truck liftings product values will be increased by $0.04 per barrel of product.

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EXHIBIT "B"

ESTIMATED COST OF OPERATING 18,000 DWT U.S. FLAG PRODUCTS TANKER IN GULF COAST/PHILADELPHIA TRADE

BASIS: Construction Cost @ $279 DWT		$5,022,000
Sea Voyage @ 15.5 K		9.8 Days
Port Time		2.5
	Total	12.3 Days.
Trips per Year (345 Days)		28.05
Tons per Trip		17,032
Annual Cargoes - Tons		477,748

COST:		ANNUAL	PER TON
Wages: Base	$168,496		
Overtime	58,514		
Vacation & Relief	13,896		
Pension & Welfare	5,469	$ 246,375	$ .5157
Subsistence		29,200	.0611
Stores, Supplies & Expense		39,785	.0833
Repairs		109,500	.2292
Insurance:			
Hull & Machinery		67,722	.1418
P&I & Crew Interests		13,868	.0290
War Risk		5,110	.0107
Overhead:			
Pay Roll Taxes	$ 5,278		
Employees' Benefits	15,667		
Admin. Expense - Dept.	30,523		
" " - General	13,816		
Misc. Ins. Auto, Fire, Fidelity	204		
Dep'n of Office Equipment & Autos	289		
Taxes - Federal, State & Local Franchise & Use	223	65,700	.1375
Fuel 91,564 Bbls. @ $1.85		169,393	.3546
Port Charges @ $1,500 Trip		42,075	.0881
Depreciation (20 Yr. Less 2-1/2%)		244,822	.5124
Interest (3-1/2% on Avge. Investment)		87,885	.1840
Cargo Insurance		4,786	.0100
Evaporation and Handling Loss		41,158	.0861
TOTAL		$1,167,379	$2.4435

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EXHIBIT "C"

AVERAGE COST INCURRED BY GULF, ITS SUBSIDIARIES AND AFFILIATES, IN OPERATION OF THEIR 28,000 TO 33,000 DWT FOREIGN FLAG TANKERS FOR THE PERIOD JULY 1, 1951 TO JUNE 30, 1952, INC.

KUWAIT/PHILADELPHIA TRADE

	ANNUAL	TON	BBL. 31.5° API
Wages	$ 94,488	$ .4900	$ .0664
Subsistence	29,476	.1529	.0207
Stores, Supplies, Manning & Misc. Expense	54,409	.2822	.0383
Repairs and Maintenance	77,998	.4045	.0548
Insurance:			
Hull & Machinery	71,792	.3724	.0505
P&I and Social	30,989	.1607	.0218
War Risk Insurance	16,278	.0844	.0114
Overhead	29,200	.1514	.0205
Fuel	352,948	1.8305	.2481
Port Charges	15,288	.0793	.0107
Suez Canal Tolls	168,280	.8728	.1183
Cargo Insurance	11,834	.0614	.0083
Evaporation and Handling Loss	12,523	.0650	.0088
TOTAL	$965,503	$5.0075	$ .6786
Items Excluded:			
Depreciation (20 Yr. Life 2-1/2% Salvage)	$299,813	$1.5549	$ .2107
Interest @ 3-1/2%	107,625	.5582	.0756
	$407,438	$2.1131	$ .2863

11321

Supplemental Affidavit of George H. Hill, Jr., May 20, 1960, and Supporting Exhibits

[11470] UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

GEORGE H. HILL, JR., being duly sworn, deposes and says:

1. I am informed by the attorneys for Cities Service Company that during the oral argument on May 9, 1960, of Cities Service's motion for summary judgment, the Court requested or was offered documentation of certain statements made to it by counsel, as follows:

(a) Counsel for Standard Oil Co. (New Jersey) informed the Court of a communication from the State Department in February, 1952, requesting non-official entities to avoid involvement in the British-Iranian oil controversy. This communication was marked for identification as SO (NJ) Exh. 3 on the examination before trial of plaintiff conducted by Standard Oil Co. (New Jersey); and it is one of the papers submitted to the Court by plaintiff on this motion.

(b) Counsel for Cities Service revealed to the Court that the trip to Iran of W. Alton Jones had been under-[11471] taken with the full approval of the United States Government, including the specific approval of the Presi-

dent of the United States. This is established by exhibits 71 and 75, annexed to this affidavit.

(c) Counsel for Cities Service stated that Cities Service maintained its interest in Iran long after the Iranian trip. This is established by exhibits 60 through 70, 72 through 74 and 76 through 81, annexed to this affidavit.

2. I have set forth below a chronological listing of these exhibits, together with short descriptions thereof.

Exhibit No.	Date	Description
60	Sept. 29, 1952	Letter from F. Ashraf of the National Iranian Oil Co. to A. P. Frame, of Cities Service, requesting technical advice.
61	Oct. 1, 1952	Interoffice Cities Service memorandum from A. P. Frame to B. S. Watson, regarding proposed loan of Cities Service technicians to Iran, and suggesting names of Cities Service personnel for this purpose.
62	Oct. 16, 1952	Letter from Frame to Ashraf, furnishing requested advice.
63	Oct. 28, 1952	Letter from Jones to Parkhideh, stating that U.S. Government officials were then so occupied in national elections, that it was difficult to achieve attention to pressing matters.
64	Oct. 28, 1952	Letter from Jones to Parkhideh, telling of talks by Jones with Iranian officials, in which he had emphasized the importance to Iran of solution of compensation questions with the British, which would permit use of Anglo-Iranian transportation facilities.
65	Oct. 30, 1952	Letter from Allah-Yar Saleh, Iranian Ambassador to United States, to Mr. Jones, stating that he had sent to Premier Mossadegh a report of his talks with Jones on October 2.
66	Nov. 15, 1952	Letter from M. G. Bayat, Managing Director of National Iranian Oil Co., to W. Alton Jones, thanking Jones for the dispatch of equipment for the Abadan refinery.
67	Nov. 24, 1952	Letter from Jones to Henderson, stating that Jones wishes to discuss with Henderson several matters concerning Iranian oil problem.

Supplemental Affidavit of George H. Hill, Jr., May 20, 1960, and Supporting Exhibits

Exhibit No.	Date	Description
68	Dec. 19, 1952	Interoffice memorandum from A. P. Frame to W. Alton Jones, stating that six Cities Service technical experts had been approached and had agreed to go to Iran. "It is my understanding that it is not your desire to make these individuals available to the National Iranian Oil Company until you have had further discussions with our own State Department in regard to this matter."
69	Dec. 22, 1952	Letter from Jones to Allah-Yar Saleh, Iranian Ambassador to U.S., enclosing list of available Cities Service technicians. "It would be desirable to secure approval or acquiescence of our State Department before authorizing these men to proceed to Iran, in order that there would be no international complications."
70	Dec. 22, 1952	Letter from Jones to Parkhideh, stating that this period of a changeover in national administration was a difficult time to secure action in the U.S., but that Jones continues to have talks with Government officials, including Henderson, in effort to bring British government into "more rational approach". With regard to your request for a loan of technicians, we have supplied your ambassador with a list of available men from Cities Service.
71	Dec. 31, 1952	Letter to Jones from Secretary of the Interior Oscar Chapman, stating that Jones had met with President Truman, Director of the Central Intelligence Agency Gen. Bedell Smith, Under Secretary of State Bruce, and other governmental officials, prior to leaving for Iran.
72	Jan. 6, 1953	Letter from Jones to John Foster Dulles, incoming Secretary of State, enclosing legal opinion of Davis, Polk, Wardwell, Sunderland & Kiendl supporting Iranian position in Iranian-British dispute.
73	Jan. 6, 1953	Letter from Jones to Herbert Brownell, Jr., incoming Attorney General of the United States, enclosing Davis, Polk, Wardwell, Sunderland & Kiendl opinion supporting Iranian position.
74	Jan. 8, 1953	Letter, Parkhideh to Jones: You have probably been informed of the decision to request officially the loan of technicians.

Supplemental Affidavit of George H. Hill, Jr., May 20, 1960, and Supporting Exhibits

Exhibit No.	Date	Description
75	Jan. 19, 1953	Letter from the President of the United States, Hon. Harry S. Truman, to W. Alton Jones, stating that Jones had made his trip to Iran after conferring with President Trunman who had determined, after consulting with his advisors, that trip would be in the "national interest".
76	April 18, 1953	Letter from M. Bayat, Managing Director of the National Iranian Oil Company, requesting training of Iranian employees and loan of Cities Service technicians.
77	May 16, 1953	Letter from Mr. Jones' secretary to Mr. Bayat, acknowledging letter of April 18 and stating that Mr. Jones would respond to it after conferences in Washington during the week of May 25.
78	May 20, 1953	Letter from A. P. Frame to Reza Fallah of National Iranian Oil Company, concerning the proposal to supply or train technicians. "You also understand, I am sure, that . . . such a plan would need to have the complete approval and support of our own State Department as well as of your own governmental authorities."
79	June 17, 1953	Letter from Fallah to Frame, responding to letter of May 20.
80	July 2, 1953	Letter from Frame to Fallah, stating that with regard to the supplying of Cities Service technicians to Iran, Mr. Jones has had many conversations with U.S. Government officials in order to secure "in advance the blessing of our government for any proposed action. *No such blessings were offered by the U.S. government* and consequently Mr. Jones has not felt free to send our technologists to Iran as originally contemplated" (emphasis supplied).
81	July 10, 1953	Letter from Mr. Jones to Premier Mossadegh, commenting on an exchange of correspondence between Premier Mossadegh and President Eisenhower, and referring to the discussions between Mossadegh and Jones with regard to the earlier Churchill-Truman note.

(Sworn to by George H. Hill, Jr., on May 20, 1960.)

EXHIBIT 60, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

Abadan
29th Sept. 1952

Mr. A.P. Frame
Cities Service Co.,
New York.

My Dear Mr. Frame;

Your kind promise to help us with any problems we may have in the Refinery has prompted me to write this note.

In the Clay Contact Unit of our Lub Oil Plant we are having trouble with the discharge of spent clay through the screw conveyor or "Scroll". The mixture of oil and clay cut from the filter surface by the knife blade and dumped on the scroll sticks to the helical vanes and does not come out at the end, thus jamming the conveyor and tripping the electric motor.

We are trying our best to remedy the situation. Meanwhile could one of your experts give us information about what may go wrong in this part of the unit to cause the above trouble. No need to say that any advice on this matter from your engineers will be highly appreciated.

Hoping to hear from you very soon,

Yours sincerely
F. Ashraf
F. Ashraf

11412

EXHIBIT 61, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

October 1, 1952

Mr. B. S. Watson:

While we were in Iran several conversations were had with the officials of the National Iranian Oil Company regarding our supplying some technical assistants for a limited period of time to aid the Iranians in operating their lube plant at Abadan, as well as for certain other specialized jobs.

It was tentatively agreed that we would supply six men for this purpose - three to be experts in lube operations, one a skilled instrument man, one to establish inspection procedures for operating equipment, and the sixth man an expert in power generation to aid the Iranians with their power situation at Abadan and also in the fields.

Since my return I reviewed the situation and we have tentatively selected one man and an alternate whom we feel would be thoroughly qualified to do the work. I am listing the names of these men and the company where they are now employed.

MEK and Clay Treating

Carter Simpson - W. F. Pollard (Cit-Con)

Furfural

C. A. Bumpus - C. P. Goforth (Cit-Con)

Compounding and Packaging

Don Suddell - Don Stover (Pennsylvania Co. Delaware Co.)

Instruments

W. Leslie Willoughby - Carl A. Brodine (Cities Service Refining)

Inspection

E. C. Hendrickson - H. E. Carlson (Cit-Con Delaware Co.)

Power Generation

D. L. Funkhouser - F. I. Stalnecker (Cities Service Refining)

11413

Exhibit 61, Annexed to Affidavit of George H. Hill, Jr.

These men are all top-flight men in the Cities Service organization whom we feel could be spared from their present jobs for a six-months' period, without damaging our own operations since all of these men have assistants who can, for a limited period of time, take over their normal duties.

If it is decided to go ahead with the furnishing of technical assistants, I would suggest that these men be approached on the basis that their service in Iran would be limited to a six-months' term; that they would continue on their present payroll for this period; that their expenses would be paid and that on their return would be given a bonus equal to three months' salary. Of course, they would return to their jobs which they now hold.

On the above basis, I estimate that the cost to Cities Service organization for these six men for the six-months' period would not exceed $50,000.

Before approaching these men, I wish to be sure that the plan as proposed meets with your approval, and that of Mr. Jones.

A. P. Frame

A. P. FRAME

bw

11414

EXHIBIT 62, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

Air Mail

U. S. Petroleum, Inc.

October 16, 1952

Mr. F. Ashraf,
National Iranian Oil Company,
Abadan, Iran.

Dear Mr. Ashraf:

I was very glad to hear from you under date of September 29. The trouble you are having with spent contact clay jamming in the scroll conveyor has been discussed with our technicians. It is their opinion that the most probable causes are a dull knife blade or a cake that is too wet, or a combination of these factors.

It has been their experience that a dull knife blade causes the clay to come off the cake in balls or lumps rather than being cut off sharply and that this is often followed by accumulation in the scroll. This tendency can usually be overcome by sharpening the blade to give a clean cut.

The wet cake is usually caused by the inert gas employed to dry the cake being too low in temperature to bring the clay to the necessary degree of dryness. In that case the clay tends to ball together and stick to the scroll instead of carrying on through. The remedy is to increase the temperature of the inert gas, or, if the inert gas tubes in the heater have been by-passed, to return them to service. We have had some trouble with these tubes burning out in which case they are by-passed but operation of the scroll conveyor is never satisfactory on these occasions. We are planning on installing alloy inert gas heater tubes to minimize this difficulty.

My kind regards to Doctor and Mrs. Fallah and yourself.

Sincerely yours,

A.P.Franz
FMC

11415

EXHIBIT 63, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

October 28, 1952

Mr. Abbas Parishideh,
Manager, Purchase Department,
National Iranian Oil Company,
Tehran, Iran.

My dear Abbas:

Your letters of October 11th and 15th have been received, together with copies of the photographs taken at Abadan, as well as those taken while we were with His Holiness, Ayatollah Kashani.

Please convey to His Holiness my sincere thanks for his courtesy in autographing the photograph and tell him that I shall always keep it as a reminder of one of the most interesting experiences I had while in Tehran.

Please also convey to him my deep appreciation for his expression of confidence and good will. You may assure him that Iran and its problems, particularly as they relate to oil, are still very much in my mind and, in spite of many complications, I am hopeful that a solution may be found.

Some appearances to the contrary, I am still convinced that the United States wants to be helpful and will continue to work toward an honorable solution of the oil dispute.

Patience and restraint are required on all sides and I hope that the subject will have the continued interest and thoughtful consideration of His Holiness and other patriotic Iranians who want to see a better day ahead for your country.

Washington executives are now so busily occupied in the national elections, which will be held one week from today, that it is difficult to get attention to pressing matters there.

11416

Exhibit 63, Annexed to Affidavit of George H. Hill, Jr.

After the election is over it should be possible to have some further and more satisfactory talks about the situation.

As soon as there is anything of importance to report I shall advise you.

In the meantime, please convey my kindest regards to His Holiness, His Excellency, the Prime Minister, Senator Bayat and my other good friends.

Sincerely,

EXHIBIT 64, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

October 28, 1952

Mr. Abbas Parkhideh,
Manager, Purchase Department,
National Iranian Oil Co.,
Tehran, Iran.

My dear Abbas:

You may recall, at the time I said good-bye to you at the airport in Tehran, you handed me a letter addressed to Mr. A. Mahloudji, Economic Adviser to Mr. Makki, c/o the Iranian Embassy in Washington, and, as I recall it, you suggested it might be desirable for me to meet with Mr. Makki.

When I returned to the United States Mr. Makki was on a tour of the country as a guest of the World Bank. As I understand it, Mr. Makki visited some of our industrial centers, such as Detroit, Chicago and Kansas City and then made a trip to the northwest to see something of the water power developments and irrigation projects in the west; thence to Houston, Texas, where he met Cap Nieber who showed him something of the oil country.

He then came back to Washington and, after a few days there (including a long conference with members of the State Department), came on to New York. On his arrival here Mr. Foroughi, Consul General in New York, called my office and advised that Mr. Makki would like to see me.

I went up to his hotel on Friday, October 17th, and met with Mr. Makki, Mr. A. Parsa, a member of Parliament, and Mr. Foroughi. On Wednesday last Mr. Makki and his party, consisting of Messrs. Parsa, Mahloudji, Foroughi and Mr. Nemazee, former Commercial Attache in Washington, came to the office where he met some of my associates, including Messrs. Frame, Whetsel and Heston.

Before during and after lunch we had a long discussion of the oil problem which confronts your country.

11418

Exhibit 64, Annexed to Affidavit of George H. Hill, Jr.

In my talks with Mr. Makki, both at his hotel and in the office, I emphasized three points -

1. The vital importance of a careful analysis of the oil problem without too much emotion.

2. The lack of public understanding in the United States of the complicated questions involved, and

3. The importance to Iran of some solution of the compensation questions with the British, which would permit the use of the Anglo-Iranian transportation facilities.

It is of course difficult for me to tell just what Mr. Makki's reaction was to my discussion, but he was courteous and attentive and I thought restrained in his expressions.

If you have occasion to see him it would be interesting to have you write me frankly as to what his present attitude is toward the discussions we had here. Such a frank opinion from you might help me very materially in planning any further contribution which I might make to the solution of the oil problem.

With kindest regards, I am,

Sincerely,

EXHIBIT 65, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

IRANIAN EMBASSY
WASHINGTON, D. C.

October 30, 1952
No. 1964

Mr. Alton Jones,
Cities Service Oil Company,
10 Pine Street,
New York, N. Y.

Dear Mr. Jones:

I sent a full report to His Excellency Dr. Mossadegh on our talks when you kindly called on me on October 2nd.

He has commissioned me to forward to you his sincere greetings and thanks for your kind sentiments towards Iran.

Hoping to see you again soon,

Sincerely yours,

Allah-Yar Saleh

Allah-Yar Saleh,
Ambassador of Iran.

EXHIBIT 66, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

Khorramshahr, 15th. November, 1952.

Dear Mr. Jones,

I have been intending to write to you and thank you for the articles you have so kindly dispatched to us for use in our Hospitals and Refineries. It was a pleasure to have had you and your colleagues as our guests for the few days you spent in Abadan and the Oilfields.

We are specially indebted to Mr. Frame for the urgent attention he has given to some requirements requested by our General Refineries Manager.

I hope we shall hear from you in due course and we look forward to your further assistance and co-operation.

Please give our kindest regards to your colleagues.

Yours sincerely,

Morteza Bayat

M.G. BAYAT

11421

EXHIBIT 67, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

November 24, 1952

My dear Mr. Ambassador:

It would be most gratifying indeed to have a visit with you while you are in the states.

There are several matters about the Iranian oil problem on which I would like to have your views.

If you will indicate the time and place, I shall try to suit your convenience.

With kindest regards,

Sincerely,

Honorable Loy W. Henderson,
Room 2271,
New State Department Building,
Washington, D.C.

EXHIBIT 68, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

December 19, 1952

Mr. W. A. Jones:

During our recent visit to Iran various discussions were held with officials of the National Iranian Oil Company regarding the possibility of the Cities Service organization providing six petroleum technologists to assist the Iranians in the operation of their oil facilities at the present level of operations. It was agreed that the immediate need was for three experienced technologists in the field of lube oil manufacture, one instrument engineer, one steam and electric power generation engineer, and one technologist experienced in the field of general refinery inspection operations.

I have reviewed our personnel in this light and the following qualified individuals have indicated their willingness to go to Iran at our request for a period not to exceed six months. Following is the list of the individuals and their qualifications:

E. G. Hendrickson	Age 52; presently Chief Engineer of Cit-Con Oil Corporation, Lake Charles, La. He has been with the Cities Service organization for 28 years and is thoroughly qualified in all fields of refinery maintenance and inspection activities.
F. L. Stalnecker	Age 49; presently Superintendent of Power, Cities Service Refining Corporation, Lake Charles, La. He has been 10 years with the Cities Service organization and is thoroughly qualified in the fields of steam and power generation and distribution.
W. L. Willoughby	Age 47; presently head of the Instrument Department, Cities Service Refining Corporation, Lake Charles, La. He has been 18 years with the Cities Service organization and is probably one of the foremost instrument engineers in the refining industry.
C. P. Goforth	Age 34; presently Chemical Engineer of the Extraction Units, Cit-Con Oil Corporation, Lake Charles, La. He has been 7 years with the Cities Service organization and is a highly trained technical man specializing in the field of the operation of extraction units in lube oil production.

11423

Exhibit 68, Annexed to Affidavit of George H. Hill, Jr.

D. W. Sudell — Age 49; presently Assistant Plant Superintendent at the Petty's Island plant. He has been 22 years with the Cities Service organization and is experienced particularly in the field of blending and packaging lubricating oils.

C. L. Simpson — Age 51; presently Superintendent of the Dewaxing Plant, Cit-Con Oil Corporation, Lake Charles, La. He has been 26 years with the Cities Service organization and is experienced in the operation and technical control of MEK dewaxing facilities.

The total present annual salary of these six men is $58,200; to this must be added 20% covering the cost to the company of pension plan, thrift plan, insurance, vacations and other benefits, thus bringing the total annual cost to Cities Service of these individuals to $69,840. To induce these men to accept foreign service for a six-months' period it will be necessary to give them a bonus equivalent to 50% of their present income. On this basis, therefore, the salary cost of these six men for the six-months' period will amount to $49,470. To this amount would be added about $9,000 for transportation to and from Iran, plus about $7,500 for expenses over and above housing and food in Iran. Therefore, the total cost to the National Iranian Oil Company for the services of these six men is estimated to be about $66,000 for a six-months' period, plus free housing and meals for them while they are in Iran.

Because of our pension plan and other benefits it will be necessary that these individuals be kept on the Cities Service payroll during their stay in Iran and that the National Iranian Oil Company reimburse Cities Service for their total cost.

It is my understanding that it is not your desire to make these individuals available to the National Iranian Oil Company until you have had further discussions with our own State Department in regard to this matter.

A. P. Frame

11424

EXHIBIT 69, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

December 22, 1952

Honorable Alah-Yar Saleh,
Ambassador of Iran,
Iranian Embassy,
Washington, D.C.

My dear Mr. Ambassador:

You will find enclosed herewith a memorandum from Mr. Frame, the refinery expert who accompanied me to Iran.

This memorandum deals with a list of technicians who might be made available to your country for temporary use.

As I told you over the phone, the approximate total cost to Iran for the six months for the group would be $66,000.00, plus housing and meals while in Iran. This figure, of course, includes no profit to Cities Service Company or any of our subsidiaries.

It would be desirable to secure approval or acquiescence of our State Department before authorizing these men to proceed to Iran, in order that there would be no international complications.

With kindest regards,

11425

EXHIBIT 70, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

December 22, 1952

Mr. Abbas Parkhideh,
National Iranian Oil Company,
Tehran, Iran.

My dear Abbas:

I am very sorry that the pressure of work and a difficult travel schedule has prevented my writing you more promptly about the various things which I have been trying to do to help toward a solution of the oil problem.

As I explained to you and Dr. Mossadegh and His Holiness Kashani before leaving Tehran, this has been a very difficult time to secure any action in this country.

From the time of my visit to Iran and through November 4th we were in the midst of our Presidential campaign, which resulted in the election of General Eisenhower. Since November 4th General Eisenhower has been busy picking his cabinet and getting ready to take over the affairs of government on the 20th of January.

In this interim the present government is reluctant to take any positive action concerning important matters for fear of being criticised, and of course it is impossible for the incoming government to take any official actions whatever.

You can see, therefore, that, in spite of the fact that I have had many conferences with present government officials and with incoming government officials, there has been little to show for my efforts.

Please know that I am still vitally interested in your problem and have been doing everything in my power to help toward its solution. These efforts include not only conferences with members of the outgoing and incoming governments but also extended conferences with oil executives, publishers, members of the press and newspaper people.

All of these things have been done in the hopes that I might clear up some of the misunderstandings in America toward the nationalisation act and explain away some of the misconceptions which grew out of it.

11426

Exhibit 70, Annexed to Affidavit of George H. Hill, Jr.

Many of these misconceptions are undoubtedly traceable to bad reporting and in some cases propaganda on the part of certain British agencies.

From the conferences I have had I am sure that the new government is fully aware of the seriousness of the situation which confronts your country and wants to do everything in its power to be helpful.

As you know, Ambassador Henderson has been in this country for several weeks and largely through his efforts, after full conversations with me, further efforts have been made to bring the British government into a more rational approach to the oil problem. These efforts have not met with full success, but I am sure some progress has been made.

Ambassador Henderson left yesterday for Tehran and should by this time have acquainted Dr. Mossadegh with his suggestions which he thinks will be helpful.

My own views, which have been heretofore expressed, can be summarized as follows:

1. Agreement should be reached between Iran and Great Britain to refer the question of compensation to the International Court of Justice without reservations. This would leave the Court free to hear both sides of the question and reach an equitable decision.

2. Coupled with the reference to the Court an agreement should be worked out to immediately reactivate Abadan and restore its production to the world oil trade.

3. Either the American government or some other agency and/or oil companies should make prompt financial advances to your country to help meet the strain of your economy.

4. An American organization (perhaps a non-profit one) should be formed to supply technicians which will be needed to fully reactivate your property.

With these things done I am sure that within a relatively short time you would see a revival of your economy to the point where the threat of Communism would be greatly reduced and perhaps avoided entirely.

Exhibit 70, Annexed to Affidavit of George H. Hill, Jr.

To carry into effect the program outlined above will require the full cooperation of your government. By your government I mean not only Dr. Mossadegh, but leaders such as Makki, Hasebi and others of the Majlis, as well as His Holiness Kashani, for any agreement proposed not having the support of these men would perhaps not meet with the approval of your people.

You have heretofore asked me about providing technicians for the lubricating oil plant. We have been busy on this and have already selected these men from our own organization who can be made available at an early date.

We have discussed this matter with your Ambassador in Washington and have provided him with a list of the individuals, a record of their experience and the approximate cost of sending them to Iran for a period of six months which we think would be long enough to train a limited number of skilled operators at Abadan.

I know that you must be highly impatient at the apparent delay in some findings to the solution of your problem and I realize that time is of the essence, but I want you to know that the British attitude has greatly complicated a quick solution of this problem and the bitterness which has been engendered on both sides has made it almost impossible to accomplish a speedy solution.

Please convey to Dr. Mossadegh, Senator Bayat and His Holiness Kashani and others my kindest regards and best wishes, and give them the assurance that I am doing everything within my power to help in an honorable solution of the Iranian oil problem.

Sincerely,

11428

EXHIBIT 71, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

THE SECRETARY OF THE INTERIOR
WASHINGTON

December 31, 1952

Dear Pete,

In order that the record may show the parts played by myself and certain other government officials in the planning and execution of your recent trip to Iran in response to Prime Minister Mossadegh's invitation, I wish to recount the history of this event insofar as I know it.

Early in August 1952 you advised me as Petroleum Administrator that you had received a formal invitation from Prime Minister Mossadegh inviting you to come to Iran to survey the petroleum situation in that country and to offer suggestions as to steps which might be taken to reactivate the oil industry of Iran.

At that time you advised me that you were reluctant to accept the Prime Minister's invitation but that before you declined it you wished to ascertain the views of the various U. S. government officials concerned with petroleum matters and the international situation.

After discussing the matter with you in detail and with full realization of the seriousness of the international situation, and on my own initiative and over your objections, I arranged a series of conferences between you and myself and President Truman, Under Secretary of State Bruce, General Bedell Smith of the Central Intelligence Agency, and various other government officials. In these conferences the entire situation was throughly explored and, without exception, all government officials participating in these conferences, including myself, urged you to accept Prime Minister Mossadegh's invitation particularly since your company had no direct association with oil operations in the Middle East, thus permitting you to deal objectively with the problem.

It was recognized by all concerned that the invitation was to you as a private individual and that no U. S. government sanction for such a trip was requested or necessary but all the government officials consulted about the matter felt that in the interests of world peace it would be highly advisable for you to accept the Iranian invitation and to see if you, with your broad experience in petroleum and industrial affairs, could aid in the promotion of some acceptable solution of the impasse existing in all plans for the reactivation of the oil industry of Iran.

11429

Exhibit 71, Annexed to Affidavit of George H. Hill, Jr.

In response to the urgings of these government officials you agreed to accept Prime Minister Mossadegh's invitation and did indeed make the trip to Iran. For your efforts in this matter I personally wish to thank you for what you have done and to assure you that our government is indeed grateful for your efforts to find a solution to this most serious international problem.

Sincerely,

Secretary of the Interior

Mr. W. Alton Jones
President, Cities Service Company
Sixty Wall Tower
New York 5, New York

EXHIBIT 72, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

January 6, 1953

Mr. John Foster Dulles,
General Eisenhower's Headquarters,
Room 735,
The Commodore Hotel,
Lexington Ave. & 42nd St.,
New York, N.Y.

My dear Mr. Dulles:

As promised, I am sending you herewith the opinion and supporting memorandum of the firm of Davis Polk Wardwell Sunderland & Kiendl dealing with the question of the right of the State of Iran to expropriate or nationalize property within its territory and the possible result of a suit brought in American courts against the purchaser of oil from the State of Iran.

Please know that I appreciate sending this opinion to you is perhaps like carrying coal to Newcastle, but when, as and if the subject becomes of interest it might save your office some work.

Please understand further that this opinion was not secured with the idea of supporting any contemplated action which I might take in the purchase of oil.

You already know my views on this subject and you understand that I feel that small purchases of Iranian oil cannot possible solve the complicated problem and would no doubt tend to complicate it further.

It seems to me the only honorable solution lies in the direction of -

1. Reference of the question of compensation to some independent tribunal, such as the International Court of Justice.

2. Agreement with Anglo-Iranian, Shell and American companies to cooperate in putting Iranian oil back into world trade.

Exhibit 72, Annexed to Affidavit of George H. Hill, Jr.

3. Staffing of operating company in Iran with technical experts from America or other non-British countries.

4. Substantial financial aid to Iran to bolster their economy until revenues from oil are available again.

There has been no general distribution made of this opinion and brief; in fact only Mr. Winthrop Aldrich, Mr. Herbert Brownell and yourself have received copies.

It would seem that substantial progress is being made in the negotiations now going on in Tehran and London. Even assuming, however, reasonably prompt agreement on general terms, the details will require considerable time to work out and the problem will no doubt be on the door-step of the new administration for final disposition.

You know of my vital interest in helping in any way I can to support the administration in finding a proper solution to the problem. While I am not looking for any more jobs, please feel free to call upon me if I can be of any help.

Sincerely,

Exhibit 72, Annexed to Affidavit of George H. Hill, Jr.

DAVIS POLK WARDWELL SUNDERLAND & KIENDL
15 BROAD STREET
NEW YORK 5, N.Y.

December 16, 1952

Gentlemen:

You have asked me to consider the status before American courts of a purchaser of oil from the Iranian Government. I think the following conclusions are justified by the decisions of our courts up to this time:

1. Under international law a sovereign state, in this case the State of Iran, has the absolute right to expropriate or nationalize property within its territory. Where the act is that of a recognized government performed by one of its agents, our courts will not inquire into the validity of the act under the municipal law of the expropriating state or under international law.

2. Where the Executive Branch of our Government refuses to recognize the expropriating state or its acts as valid, our courts will follow the decision of the Executive.

3. Absent such disapproval by the Executive, which is to say the State Department, no recovery can be had in American courts against a purchaser of oil from the State of Iran, whether the plaintiff be the Anglo-Iranian Oil Co., the British Government or any person claiming under either of them.

The authorities supporting these conclusions are discussed at length in a memorandum heretofore submitted to you.

Yours very truly,

/s/ JOHN W. DAVIS

EXHIBIT 73, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

January 6, 1953

Mr. Herbert Brownell, Jr.,
25 Broadway,
New York, N.Y.

My dear Mr. Brownell:

As promised, I am sending you herewith the opinion and supporting memorandum of the firm of Davis Polk Wardwell Sunderland & Kiendl dealing with the question of the right of the State of Iran to expropriate or nationalize property within its territory and the possible result of a suit brought in American courts against the purchaser of oil from the State of Iran.

Please know that I appreciate sending this opinion to you is perhaps like carrying coal to Newcastle, but when, as and if the subject becomes of interest it might save your office some work.

Please understand further that this opinion was not secured with the idea of supporting any contemplated action which I might take in the purchase of oil.

You already know my views on this subject and you understand that I feel that small purchases of Iranian oil cannot possibly solve the complicated problem and would no doubt tend to complicate it further.

It seems to me the only honorable solution lies in the direction of -

1. Reference of the question of compensation to some independent tribunal, such as the International Court of Justice.

2. Agreement with Anglo-Iranian, Shell and American companies to cooperate in putting Iranian oil back into world trade.

3. Staffing of operating company in Iran

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Exhibit 73, Annexed to Affidavit of George H. Hill, Jr.

with technical experts from America or other non-British countries.

4. Substantial financial aid to Iran to bolster their economy until revenues from oil are available again.

There has been no general distribution made of this opinion and brief; in fact only Mr. Winthrop Aldrich, Mr. Dulles and yourself have received copies.

It would seem that substantial progress is being made in the negotiations now going on in Tehran and London. Even assuming, however, reasonably prompt agreement on general terms, the details will require considerable time to work out and the problem will no doubt be on the door-step of the new administration for final disposition.

You know of my vital interest in helping in any way I can to support the administration in finding a proper solution to the problem. While I am not looking for any more jobs, please feel free to call upon me if I can be of any help.

Sincerely,

EXHIBIT 74, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

TEHRAN,
IRAN.

January 8, 1953.

My dear Jones:

Sometime ago Sattareh wrote and told me that you have posted me a letter, so I patiently waited to receive it. However, up till now it has not reached me and as I contemplate leaving for Abadan within the next few days, I decided not to wait any longer so I send you this letter.

You have probably been informed regarding the decision of officially requesting you to send your six men as per your arrangements with Mr. Saleh, and I hope that this will be expedited as much as possible. However, I have been notified by Abadan that they also need a technician well acquainted with corrosion problems and the methods of preventing corrosion. They have mentioned a Metallurgist, but you are definitely in a much better position to say what is best for this purpose, therefore if one of the six men already chosen cannot be useful in this capacity, please give us an additional man for this purpose.

Kindly convey my best wishes to all my friends. My wife sends you her best wishes, and I remain,

Yours very sincerely,

A. Parkhideh.

Mr. W. Alton Jones,
60 Wall Tower,
New York City, N.Y.
U.S.A.

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EXHIBIT 75, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

THE WHITE HOUSE
WASHINGTON

January 19, 1953

Dear Mr. Jones:

I appreciate your cooperation in connection with your trip to Iran last summer.

When you received Dr. Mossadegh's invitation to visit Iran you were considerate enough to ask my advice before you acted on the invitation. After some consultation with my advisors I decided that it was in the national interest for you to make the visit to Iran.

While you made this trip solely as a private citizen and did not in any way represent the Government of the United States I am certain that with your knowledge and vast experience with petroleum matters the trip should prove helpful to both the United States and the Iranian Government.

Sincerely yours,

Harry Truman

Mr. W. Alton Jones
President
Cities Service Company
60 Wall Tower
New York 5, New York

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EXHIBIT 76, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

National Iranian Oil Company
Khoramshahr Iran

Date 18th. April, 1953
Your Ref. _____
Our Ref. 395

Dear Mr. Alton Jones,

As you are aware the National Iranian Oil Company is much in need of fully trained Iranians for its technical and commercial operations. Up to the present time exceptional circumstances prevented the Company from taking steps to send abroad employees for higher practical training. I shall be glad if you will kindly let me know whether you can assist the Company in sending to U.S.A. up to one hundred of our educated employees who already have some years of experience of practical value. The selected candidates are intended to undergo intensive training from 6 months to one year in one of the firms or organisations abroad in specialised branches connected with the maintenance and operation of various phases of our activities in the National Iranian Oil Company.

I would like to hear your views about our plans and shall appreciate any assistance which you may be able to render towards materializing our aim.

May I take this opportunity of thanking you and Mr. Frame for the continued interest which you show in assisting our Refineries whenever they are in need of urgently required items of spares and equipment. I should also like to remind you of the promise you made of loaning to us some of your specialists for short periods. Should you find any difficulty in sending such people to Iran we can possibly arrange their formal engagements through our Embassy in Washington provided you introduce the candidates concerned and verify their competence.

I am writing to H.E. the Iranian Ambassador in Washington and I shall ask him to kindly contact you on this matter.

Yours faithfully,

Morteza Bayat

(M. BAYAT)
MANAGING DIRECTOR OF THE NATIONAL
IRANIAN OIL COMPANY

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EXHIBIT 77, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

May 16, 1953

Senator M. Bayat
Managing Director
National Iranian Oil Co.
Khorramshahr, Iran

Dear Senator Bayat:

Mr. Jones' absence from the office and the pressure of work has not made it possible for him to reply to your letter of April 18.

It is hoped that he will be able to give the matter his attention after conferences in Washington the week beginning May 25.

Yours very truly,

Office of Mr. Jones

EXHIBIT 78, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

May 20, 1953

Dr. Reza Fallah
National Iranian Oil Company
Abadan, Iran

Dear Reza:

Mr. Jones has received a letter dated April 18th from Senator Bayat in which Mr. Jones is asked if he can arrange for the intensive training of up to one hundred of your educated employees in various phases of the petroleum industry.

In this same letter reference is made to the possibility of Mr. Jones arranging for the loan of certain specialists to the National Iranian Oil Company for short periods of time.

Mr. Jones has asked for my suggestions regarding these two subjects and before I make my recommendations to him I would like to ask you if you think there is a reasonable possibility of combining these two items. For instance, during our conversations at Abadan the idea was expressed that the first foreign technical assistance you would need would be specialists in the field of lubricating oil production, instrument engineering and inspection and maintenance practices. Is it possible that you might select from your own organization certain men already experienced in the fundamentals of these particular skills, and send them to this country for training with the expectation that on their return to Iran they would be able to fulfill the duties contemplated for the foreign technologists? Quite obviously such a plan could only be successful if the men to be trained in this country were already thoroughly experienced in the general field of their specialty with the training here to bring them up to date in recent developments and applications.

Mr. Jones has expressed himself to me as being very desirous of aiding your organization in the most satisfactory manner to all concerned so that before I recommend to him any course of action I would appreciate your thoughts in this matter.

You also understand, I am sure, that before any definite steps are taken to supply foreign specialists to the National Iranian

Exhibit 78, Annexed to Affidavit of George H. Hill, Jr.

Oil Company, or to institute a training program for your employees in this country, such a plan would need to have the complete approval and support of our own State Department as well as of your own governmental authorities.

Best personal regards to you and Mrs. Fallah.

Sincerely yours,

A. P. Frame

EXHIBIT 79, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

National Iranian Oil Company
Abadan, Iran

Date 17th June, 1953
Your Ref.
Our Ref. 269/1
Subject

My dear Frame,

Many thanks for your letter of 20th ultimo in which you have asked my views concerning the possibility of combining (1) the loan of certain specialists to us for short periods of time and (2) the intensive training of some of our educated employees in various phases of Petroleum Industry in the United States.

Combining the two items enumerated above, as discussed in your letter and, as a long term policy, would be an admirable suggestion except for the fact that, at present, we need certain specialists of high standing such as experts on Cathodic Protection, Petroleum Plant Maintenance and Corrosion problems, etc. It would therefore be ideal if the two requests put forward by Mr. Bayat could be met independently and side by side, if at all possible.

I should explain that for the purpose of training our members of staff in the various phases of Petroleum Industry in the Unites States we do intend to select our candidates from amongst our educated and experienced personnel who could readily benefit from short courses of training and despatch them in groups, by no means all at once, the total number depending on our anticipated production programme up to a maximum of one hundred.

Should it prove impossible to obtain the services of a few highly qualified specialists (who would incidentally train people under them whilst in Iran as well as guide and assist in the day to day operation of our establishment) as the next best alternative I could only

Exhibit 79, Annexed to Affidavit of George H. Hill, Jr.

think of securing the services of Technical Establishments and Academic Institutions such as your goodselves, Massachusetts Institute of Technology, Tulsa University in advisory capacities provided, of course, that it would be possible for their representatives to conduct discussions and carry out inspections on site (i.e. in Abadán) as and when necessary.

I hope my views will be of some use to you and if I get a chance to visit you for a period of 2 or 3 weeks we might be able to discuss our personnel and also our machinery spare part problems in more details and determine more exactly how you can assist us.

I regret I have been unable to reply to your letter in time as I was away from Abadan for a few days.

My wife joins me in sending our best regards to you and Mrs. Frame.

Sincerely yours,

W Gallaly

EXHIBIT 80, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR.

July 2, 1953

Dr. Reza Fallah
National Iranian Oil Company
Abadan, Iran

Dear Reza:

I received your letter of June 17th in which you outlined your ideas as to the training of personnel for your operations in Iran.

I have discussed this situation with Mr. Jones who feels as strongly as ever about assisting the National Iranian Oil Company in securing the services of competent technologists to aid in your operating problems. He has followed this matter thoroughly and has had many conversations with the Iranian representatives in this country, as well as with various U. S. government officials.

In a matter as complex as this involving government policy matters Mr. Jones has been reluctant to make any move without full consultation with our own interested government officials and without securing in advance the blessings of our government for any proposed action.

No such blessings were offered by the U. S. government and consequently Mr. Jones has not felt free to send our technologists to Iran as originally contemplated. It is a matter of deep regret to both Mr. Jones and myself that this situation has developed.

In your letter of June 17th you indicated that if you were to get a chance to visit us for two or three weeks we might be able to work out methods for solving your personnel and spare parts problems. You can rest assured that if you do make such a trip we will be very glad to see you and to assist you in any way we can with your problems. For your information, I do not expect to be in New York during the month of August but will be available at other times.

Mr. Jones has not answered Senator Bayat's letter of April 18th primarily because of his hope that the position of our government in this matter would be clarified. However, this did not happen so that it has been impossible for Mr. Jones to give positive answers to the questions raised by Senator Bayat. I would appreciate it if you would communicate

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Exhibit 80, Annexed to Affidavit of George H. Hill, Jr.

the contents of this letter to Senator Bayat so that he may be aware of the present situation and our continued interest in the operations of your company.

Best personal regards to Senator Bayat and yourself.

Sincerely yours,

A. P. Frame

APF:bw

EXHIBIT 81, ANNEXED TO AFFIDAVIT OF GEORGE H. HILL, JR

July 10, 1953

My dear Mr. Mossadegh:

The exchange of correspondence between Your Excellency and President Eisenhower has been made public in the American press today.

Because of my deep and continuing interest in an honorable settlement of the controversy which now exists between your country and the United Kingdom and the serious effect of the prostration of the oil industry on the economy of your country and the hardships which result therefrom, I am prompted to offer some observations on your letter and that of the President.

In your letter to the President you say "It should be recalled that the Iranian government was prepared to pay the value of the former company's property in Iran in such amount as might be determined by the International Court of Justice."

You further say "It was also prepared to accept the jurisdiction of the court with regard to the amount of compensation, provided the British government would state the amount of its claim in advance and that the claim would be within the bounds of reason."

It would appear to me that when you say "The British government should state the amount of its claim in advance and that the claim would be within the bounds of reason" you are reserving to yourself the right of determination of the validity and the amount of the claim and not leaving it to the court.

You will recall that in our discussions of the Churchill-Truman note you raised objections to the language of the last part of paragraph one of the proposals which read: "Having regard to the legal position of the parties existing immediately prior to nationalization."

As I recall it, your interpretation of this language was that the British insisted on profits until 1993, which was in effect, in your opinion,

equivalent to a reinstatement of the concession and a denial of the right of your government to nationalise the oil industry.

Your condition that the British government state its claim in advance and that it be "within the bounds of reason" would be interpreted by many friendly to your country as your desire to determine in advance whether the British claim was equitable before agreeing to refer it to the court and would imply that you would not be willing to accept an impartial court's decision.

Frankly, it would appear to me that such a position would negate or nullify an arbitration agreement.

President Eisenhower has stated clearly what I believe to be a sound approach to the problem, namely, that the most practicable and fairest means of settling the question of compensation would be that the question be referred to some neutral international body which could consider on the basis of merit all claims and counter claims by both sides.

It is my conviction that the submission of the question of compensation on this basis would lead to an honorable settlement of the dispute.

Perhaps your reluctance to refer the question of compensation to an international tribunal without reservations stems from the fear that the tribunal might recognise some contention that full estimated profits to 1933 should be awarded to the British.

In my opinion, this fear is not justified for to take such a position would in effect deny your country the right to nationalise its oil industry. To my knowledge no decisions affecting nationalisation would justify your fear.

Please understand that this letter is written solely because of my keen interest in the solution of the problem which faces you.

My views on this oil problem have been made known to the President and members of our government, but I have not consulted with them about the writing of

Exhibit 81, Annexed to Affidavit of George H. Hill, Jr.

this letter and they do not know of it. The communication is sent as a private citizen in whom you expressed confidence by an invitation to visit your country to advise with you on oil matters.

Believe me, with sincere regards,

Cordially yours,

His Excellency Prime Minister Dr. Mohammad Mossadegh,
Tehran,
Iran.

Affidavit of Edward N. Costikyan, December 4, 1962

[11677] UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

EDWARD N. COSTIKYAN, being duly sworn, deposes and says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant Cities Service Company. I make this affidavit in opposition to plaintiff's motion for an order requiring defendant Cities Service Company to produce three categories of documents in addition to the documents already voluntarily delivered to plaintiff in connection with the examination of George H. Hill, Jr.

2. It is our position that the documents requested are entirely outside the subject matters to which Mr. Hill's examination has been limited by the order of this Court dated May 3, 1961. Judge Rifkind has fully stated our position as to the irrelevance of the Consortium Agreement to those subjects and I respectfully refer the Court to the stenographic transcript [11678] of the hearings before the Court of November 7th and November 13th which contain his argument on that point as well as to my previous affidavit of November 13, 1962, in order to abbreviate our papers in opposition to the instant motion.

Affidavit of Edward N. Costikyan, December 4, 1962

3. In August of 1962, defendant Cities Service Company delivered to plaintiff a mass of documents for plaintiff's use at the examination of Mr. Hill. These documents included all the documents found in the files of Cities Service Company which related to the subject matters specified in the Court's order of May 3, 1961, except for seven documents which had been previously produced upon our motion for summary judgment, further copies of which were later delivered to plaintiff. All these documents were delivered voluntarily, without any formal or informal agreement having been made with respect to their production.

4. Many additional documents were included which a normal file search based upon relevance would have excluded in order to obviate any apprehension on the part of plaintiff's counsel that evidence which would be germane to the two issues as to which they were to examine Mr. Hill was being withheld by a narrow construction of the Court's order.

5. For example, with respect to the acquisition by Cities Service Company of the opportunity to become a member of the Iranian Oil Consortium, we delivered documents to plaintiff which not only go up to the date of the actual acquisition by Cities Service Company of the opportunity to participate with other companies in a 5% interest in the Consortium but which also go on to include the negotiations of all the twelve companies which acquired the same opportunity. These documents also include drafts of the Participants' Agreement itself and [11679] related documents and show the final transfer by Cities Service to Richfield Oil Corporation of its right of participation.

Affidavit of Edward N. Costikyan, December 4, 1962

6. The principal Consortium Agreement itself, however, was not included.

7. In discussing our delivery of documents with Mr. Beshar I stated to him that while he did not believe the Consortium Agreement itself to be relevant we would have delivered it to him were it not for the fact that we had been apprised, as we believed plaintiff's counsel had been apprised, that other defendants strongly believed this agreement to be entirely irrelevant to the complaint and of a highly sensitive and secret nature. I informed Mr. Beshar that we would not deliver the Consortium Agreement voluntarily and that he should move for its production if he believed it to be relevant and material to the examination of Mr. Hill.

8. On October 2, 1962, in response to further inquiries from Mr. Beshar, Mr. Slatt of our office wrote to Mr. Beshar as follows:

> "Copies of the principal agreement constituting the Iranian Consortium were not delivered to you because this material does not relate to the acquisition by Cities Service Company of an opportunity to participate in that percentage of the Iranian Consortium which was allocated to companies which were not parties to the principal agreement."

9. In subsequent discussions with Mr. Beshar I again expressed our view that documents relating to the Iranian Oil Consortium itself were not relevant to the subject matters to which Mr. Hill's examination was limited but that, just as we had been willing to deliver other documents which were not strictly germane to those issues, we would volun-

tarily have delivered such documents to him were it not for the fact that we [11680] were aware, as we were sure he was, that other defendants had previously made their position clear to both of us that those documents were of a sensitive and secret nature, were irrelevant to the complaint filed in this case, and in fairness to them, should not be disclosed until the defendants who wished to do so had an opportunity to make their views known to the Court.

10. Plaintiff has now moved for the production of documents relating to:

> "1. The so-called Consortium Agreements and all correspondence, memoranda and other written material generated in connection therewith . . .
>
> "2. All correspondence, memoranda and other written material relating to defendant Cities Service's efforts to deal in Iranian oil in cooperation with any other oil company or consortium of oil companies after June 1, 1952, up to and including the date of the filing of this complaint.
>
> "3. All correspondence, memoranda and other material relating to defendant Cities Service, Richfield Oil Corporation and Sinclair Oil Corporation looking towards the transfer to or sharing with each other of the prospect of or actual right to participate in Iranian oil after June 1, 1952 up to and including the date of the filing of this complaint.

11. It is of course debatable whether plaintiff would be entitled to the production of such documents even in the conduct of a general examination. The examination of Mr.

Hill, however, is clearly not such an examination. Pursuant to Rule 56(f), it has been limited to the same two issues which the plaintiff testified were the two events which caused him to name Cities Service as a defendant in this case, as follows:

> "Q. And of this morning you are telling me—and I assume truthfully—that the two events which you identify as causing you to name Cities Service as a defendant are the contract with Gulf and the entry into the Consortium?
>
> "A. Yes, sir."
>
> *Transcript of Waldron deposition, Oct. 26, 1959, p. 6076.*

[11681] 12. Moreover, the arguments, or rather the questions, which plaintiff's counsel are now raising in an effort to obtain documents beyond the scope of the factual matters put in issue by the plaintiff with respect to Cities Service Company are the same questions which plaintiff's counsel previously raised in opposition to Cities Service Company's motion for summary judgment. Thus, in plaintiff's counsel's "Summary of Facts" counsel again raises the basic "turn-about" question:

> "The idea of a consortium of 'independent companies' had been one of the suggestions Jones had made to Mossadegh while in Iran. The theory had been that only by bringing the independents could Iran break the stanglehold which the majors had in the Middle East. Now suddenly Jones reversed his field and began speaking of a consortium of majors, the very same companies who had enabled

Anglo-Iranian to maintain an effective blockade of Iranian oil."

Summary of Facts in Support of Plaintiff's Application for Further Document Production by Cities Service, p. 11.

This is but one variation of the "turn-about" theme which was raised in Mr. Lane's argument against the motion for summary judgment:

"MR. LANE: . . . What I say is they went to this point together as opponents of the cartel, and when they reached this point Cities Service made a 180-degree turn and from that time on was in with the cartel and opposed to Waldron."

Stenographer's Minutes of Hearing of Summary Judgment Motion, May 9, 1960, p. 143.

"Obviously Jones could have been reached in any number of other ways. The undisputed facts are that he sought and obtained an invitation to take over one of the largest oil installations in the world. He was excited over the prospect and ready to pour the oil down the lion's throat if necessary. Suddenly the lamb laid down with the lion. The mind seeks an answer and in its seeking asks, 'Was Jones reached?'."

Lane Affidavit in Opposition to Summary Judgment Motion, May 6, 1960, p. 4.

[11682] Another question now raised is only a slight variation of the argument against the motion for summary judgment. Counsel's "Summary of Facts" notes that the

Government has brought an antitrust suit against Cities Service, Richfield and Sinclair and goes on to argue that:

> "Against that background, the documents produced by Cities Service on the Consortium transaction reveal that Cities Service transferred its right to participate in the Consortium to Richfield less than one month after qualifying for that right and less than two weeks after Sinclair had done the same thing. However, the documents produced do not include any which explain the background of this extraordinary cause of conduct, or even the consideration paid for the participation rights."
>
> *Summary of Facts in Support of Plaintiff's Application for Further Document Production by Cities Service, p. 14.*

In opposition to the motion for summary judgment, Mr. Lane raised the same question in a more pertinent form:

> "Independent of the buy off theory, there is the material issue whether Cities Service interfered with plaintiff's negotiations with Cities Service's 31% owned affiliate, Richfield Oil Company . . . The obvious material question is whether Cities Service had a hand in causing Richfield to drop plaintiff so precipitously."
>
> *Lane Affidavit in Opposition to Summary Judgment Motion, May 6, 1960, pp. 4-5.*

The hypothesis underlying plaintiff's counsel's questions is thus the same hypothesis as was advanced more than two years ago. They would now seek an examination to

answer questions they ask themselves rather than to explore the truth of the factual allegations raised by the plaintiff:

> "MR. BESHAR: . . . We are remaining with the position that this is, to quote Your Honor, an incantation of events which reaches out and asks the question: Why?"
>
> *Stenographer's Minutes of Argument Upon Settlement of Order, May 3, 1961, p. 16.*

[11683] 13. Plaintiff is attempting to reargue the previous summary judgment motion by raising the same questions once again. These questions, however, still do not rise to the level of factual issues. The only two factual issues which plaintiff has claimed to raise are now open to plaintiff's counsel to inquire into.

14. The documents requested by plaintiff are simply not relevant to the acquisition by Cities Service Company of the opportunity to become a member of the Iranian Oil Consortium or to the making of the Kuwait agreement with Gulf, and accordingly it is respectfully submitted that plaintiff's motion should be denied in all respects.

(Sworn to by Edward N. Costikyan on December 4, 1962.)

Excerpts from Stenographer's Minutes of Argument, May 27, 1963

[11791] The Court: Before you sit down, Mr. Beshar, I would like you to restate the last sentence you uttered, namely, that you would like to examine the people who had dealings with plaintiff with respect to the issues involved. What do you concede to be the issues involved?

Mr. Beshar: Did Cities Service conspire to boycott.

The Court: Didn't that become sharply focused as a result of the various arguments heretofore [11792] had so that when you were queried by the Court and also in the preparation of your own papers you particularized the issue by saying that there was a payoff or bait and that the agreement dated January 26, 1953 between Cities Service and Gulf Oil connected Cities Service with the alleged conspiracy?

Mr. Beshar: Your Honor, the phrase that you just read you are reading from an order prepared by Cities presented to your Honor. We had absolutely no knowledge at the time we came before you to settle that order that was going to be what Cities Service would suggest to your Honor. We didn't know who Mr. Hill was, we weren't dealing with him.

The Court: You are not answering my question. The primary circumstance to which my question is directed is your definition or redefinition of what you conceive to be the issues. You stated it as being did Cities Service conspire to boycott plaintiff.

Mr. Beshar: Yes, sir. That is our position.

The Court: Then in the course of your argument this morning you went on to say also in the form of a question what were the motivations and [11793] the events that caused Cities Service to boycott plaintiff. Now, have you anything to offer other than questions?

Excerpts from Stenographer's Minutes of Argument, May 27, 1963

Mr. Beshar: I am not entirely sure I understand that question. When a man moves for discovery I presume he is in a questioning frame of mind. If he had all the answers he wouldn't move for it.

The Court: You got to have something other than mere suspicion.

Mr. Beshar: Let there be no doubt as to the question that you put before me. I have a great deal when I come in here and ask for discovery, I have a whole series of events of Cities Service using my client to get an invitation to go to Iran, of Cities Service top people going to Iran with my client, their negotiations, talking to the press about how they were going to organize the Consortium of independent oil companies; the holding out of a promise to my client that he is going to make millions and millions of dollars working with Cities Service in bringing this oil out and then suddenly an abrupt change.

Now, my client focused on two events as being the explanation of why these people played that [11794] way with him. He looked at the Kuwait contract, a little bit that he knew about it and the Consortium as a payoff. The man could be absolutely wrong and it wouldn't affect his cause of action one jot. You don't have to be able to name what was the payoff in order to bring an antitrust suit. The essential question remains did they conspire. They could conspire for absolutely no consideration. The issue is did these people pull out of Iran and join forces with the other defendants to boycott the plaintiff and other people trying to deal in Iranian oil. That is the essential question that comes before you.

The Court: Mr. Beshar, nobody was suggesting that you had to prove the payoff but the alleged payoff was

brought into the case in the expiration or for determining whether your charge of conspiracy or claim of conspiracy was anything more than a mere conjecture and in the exploratory search the question arose as to what was it that indicated, even in terms of good hearsay, that there was a conspiracy and the Kuwait and Consortium items came in only through you. Didn't you suggest that would be a possibility?

[11795] Mr. Beshar: No question my client has in mind those two possibilities but in terms of giving them the exclusive spotlight, let us have it quite clear that is what Cities Services has focused on in an effort to keep us away from the main issue.

The Court: Didn't you focus on it? Mr. Beshar, didn't you say that those were things——

Mr. Beshar: No question about it, that is right.

The Court: Have you anything else that you think even in terms of suspicion exists?

Mr. Beshar: Absolutely. I say the essential facts before this Court are the going to Iran and those extensive dealings. I am not interested being able at the particular minute, as my client is, in what was the payoff. I am interested in examining on the essential question and that is did they conspire or didn't they.

Again I don't think one has to in advance be able to label what that was to get a discovery.

The Court: Of course that would be creating a false issue.

Mr. Beshar: That is exactly what Cities [11796] Service has done, created the false issue of focusing on Kuwait and the Consortium excluding everything else in the case.

Excerpts from Stenographer's Minutes of Argument, May 27, 1963.

The Court: You say they created that issue. What is the genesis of the issue concerning Kuwait and the issue concerning the Consortium? Who fathered that issue?

Mr. Beshar: Obviously my plaintiff put it in his complaint but there is a great deal more to the plaintiff's story than just Kuwait and the Consortium. You cannot just simply take the tail end and say that shall wag the whole dog.

The Court: Is there any other part of the anatomy, canine or otherwise, that you suggest is in the case?

Mr. Beshar: Yes, the important essential question is did they conspire and by that I mean what were the circumstances of their going into Iran and then pulling out of that. Was that pursuant to a conspiracy with the other defendants?

The Court: Is there anything that you could suggest to me of a more specific nature than what you have just articulated as a result of anything that transpired since we had the original argument [11797] on the motion for summary judgment or are we still back where we were when the argument took place?

Mr. Beshar: Certainly I am still back where the argument took place.

The Court: Then you certainly can't and I am just discussing whether there is any circumstance, even good hearsay.

Mr. Beshar: I don't rely on hearsay. We have the very solid fact that they did go to Iran.

The Court: You had that at the argument too. You said there was a history or sequence of events.

Mr. Beshar: There was a very colorful phrase——

Excerpts from Stenographer's Minutes of Argument, May 27, 1963

The Court: Regardless of the verbiage, is there anything that you now have piercing the veil of language when you take inventory today, what have you got?

Mr. Beshar: The same thing we had then.

The Court: Do you have anything more?

Mr. Beshar: I don't believe so. I am not entirely sure I know what it is that you are asking for.

The Court: I am trying to find out at this moment whether as a result of anything that has [11798] transpired in this case since the date of the argument on the motion for summary judgment, whether you have acquired any piece or scintilla of evidence direct or circumstantial beyond that which you possessed at the time of the last argument?

Mr. Beshar: Yes. I don't want to be led down a road that I shouldn't go. There is no question that in the course of the Hill examination we found many things which we will use to oppose renewal of Cities Service's motion for summary judgment.

* * *

Excerpts from Deposition of Burl S. Watson, July 27-31, 1964

[10692] Q. Prior to his leaving for Tehran, Mr. Watson, do you recall Mr. Jones expressing a specific intent to stop in The Hague?

Mr. Costikyan: Mr. Beshar, what item are we under now?

Mr. Beshar: I am no longer going to get into these colloquies. You will have to state your objections and I will go on.

Mr. Costikyan: I object as being beyond the scope of the examination. I instruct the witness not to answer.

Q. Prior to Mr. Jones leaving for Iran, had you ever

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met Mr. Sandburg? A. Oh, yes.

[10693] Mr. Costikyan: Objection and instruct the witness not to answer.

Q. Were you aware at the time that Mr. Sandburg was a member of the Finance Committee of Royal Dutch Shell? A. I do not know when I became familiar with his position in Royal Dutch Shell. I know now that he has such a position or has had in recent years. I cannot remember whether I knew it back in 1952 or not.

* * *

[10799] Mr. Beshar: Mr. Costikyan, have you rethought your position on blocking any inquiry into the contacts made by Jones with Sandburg?

Before you answer, let me tell you I have thought about this a great deal and you recall that I did question Frame about it and I began questioning

Excerpts from Deposition of Burl S. Watson, July 27-31, 1964

Watson about it, and nobody raised any objection until I, through some research, discovered the night before last that Sandburg was a member of the finance committee of Royal Dutch Shell, and suddenly there was an objection and instruction not to answer. Have you rethought that position?

Mr. Costikyan: The objection was not interposed because you discovered that you had alleged that

—496—

Royal Dutch was a co-conspirator. All I can say is that I was remiss in not objecting the first time, and I have rethought my objection and you have an order that permits examination as to conversations between Cities Service and any other defendant, and that is the order as it now stands, and I am not going to amend the Judge's order by going beyond it. And I will stand by the objection and the instruction.

* * *

Affidavit of Simon H. Rifkind, October 16, 1964

[12013] UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

SIMON H. RIFKIND, being duly sworn, deposes and says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant Cities Service Co. in this action. I submit this affidavit in support of Cities Service's motion for summary judgment and in opposition to plaintiff's motion for further discovery.

PLAINTIFF'S "CLAIM" AGAINST CITIES NOW DEFIES DEFINITION

2. Plaintiff's alleged "claim" against Cities Service is like an errant drop of quicksilver which slithers across the table, changing form, shape and direction at will (especially under increasing temperature) and continually defies definition. The "claim" changes from week to week, and from month to month. Old assertions are quietly abandoned. New ones are brought forward [12014] and then suddenly turned around 180 degrees so as to destroy the theory on the basis of which they were asserted. And, finally, plaintiff asserts he needs still more discovery to try to find some new "claim" on the basis of which Cities Service can be kept in this case as a party, because all of plaintiff's old "claims" are groundless.

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BACKGROUND

3. All of this takes place four and a half years after defendant Cities Service moved for summary judgment. At that time, in April 1960, there were two contentions asserted against Cities: (a) that it was bribed into joining the alleged conspiracy by the Kuwait contract, and (b) that it was rewarded for joining the conspiracy by being permitted to acquire a participation in the Consortium.

4. After full and extensive argument and careful research of the law, this Court held, on March 30, 1961:

> "1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.
>
> "2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events.
>
> "3. But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. * * *"
>
> "5. Because plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record, so insubstantial, the plaintiff will not be given carte blanche authority to conduct untrammeled pre-trial proceedings. Such proceedings will be closely regulated. The usual Federal rule permitting fishing expeditions will be curtailed. A just and

workable balance will be maintained between the respective interests of the opposing parties."

[12015] 5. The "suspicion" and "gossamer inference" referred to by the Court related to the alleged "bribe" of the Kuwait contract and the alleged "reward" of participation in the Consortium. An extensive examination of Mr. George H. Hill, Jr. on those two subjects was conducted by the plaintiff. *In Mr. Lane's contentious affidavit, there is not a single reference to the alleged bribe of Kuwait or to the alleged reward of participation in the Consortium.*

6. Accordingly, the two frail premises on the basis of which this Court in 1961 deferred a decision on the summary judgment motion have now evaporated.

7. In their place, however, a series of contentions have been substituted, each of which again has evaporated. Thus, in November and December of 1962, plaintiff, recognizing the futility of the Kuwait and Consortium allegations, sought to expand the discovery which this Court had permitted on the summary judgment motion, and, in effect, in the guise of seeking such discovery, obtained reargument of the summary judgment motion. After extensive argument, the Court denied the motion for further discovery and adhered to its original position.

8. Upon completion of the Hill deposition, the motion for summary judgment was resubmitted to the Court and plaintiff sought an additional reargument by challenging objections taken by counsel to questions posed upon the Hill deposition. This additional reargument was had, and the Court again adhered to its original decision and sus-

tained all of the objections which had been taken by Cities to plaintiff's irrelevant inquiries.

9. Next, for a third time plaintiff sought reargument, this time in May of 1963, in the guise of another motion for further examination, and again reargument of the original motion was had. This time the real contention advanced by plaintiff's counsel was that Cities Service had suffered a "change of position", a reversal of attitude, or a loss of interest concerning Iran and Iranian oil in [12016] October of 1952, which warranted further inquiry. He argued that he should be permitted to examine defendant Cities to ascertain whether this alleged change of position was the result of conspiracy with other defendants.

10. Again, after further argument and reargument, this Court allowed such further examination by order dated July 9, 1964. The alleged material issues of fact to which the examinations were directed were whether Cities Service's alleged change of position was the result of a conspiracy with other defendants and whether Richfield Oil's failure to purchase Iranian oil from plaintiff (after plaintiff's contract had expired) was the result of a conspiracy by Cities Service with other defendants.

11. Again, those examinations have been had. Again, the evidence adduced at those examinations—documentary and oral—has required the abandonment of these contentions because the undisputed facts do not support them.

12. The depositions in fact reconfirmed the conclusion that the inclusion of Cities as a defendant in this case was an act of utter irresponsibility. To date, plaintiff's counsel

has not developed a single evidentiary fact on the basis of which to support a claim that Cities joined the alleged conspiracy in the fall of 1952, or at any other time.

13. Indeed, plaintiff's counsel has by these depositions demonstrated the contrary—that Cities Service was never a member of any conspiracy.

14. Accordingly, plaintiff's counsel has now made a further motion for discovery, abandoning Kuwait as a bribe, abandoning the Consortium as a reward, abandoning fear as a motive, and abandoning the alleged change of position as a basis for further inquiry. Instead, Mr. Lane has substituted for his [12017] prior theories as to how Cities Service became an alleged conspirator—no theory at all! And since he has neither fact nor theory, his application floats in a vacuum of insatiable curiosity.

15. This new motion for discovery—the fourth or fifth reargument of the motion for summary judgment—is accordingly an act of even greater irresponsibility than the original naming of Cities Service as a defendant in the original complaint.

16. For the plaintiff himself has already testified that he had no claim against Cities on the basis of the facts recited in his latest motion. All of the arguments now asserted by plaintiff's counsel depend upon facts which were known to plaintiff before he learned of the Kuwait contract. At that time, knowing these facts, plaintiff drew no inference of conspiracy against Cities Service.

17. According to plaintiff, knowing all these facts, it was his misinformation about the making of the Kuwait

contract which first gave rise to the suspicion that Cities Service joined the alleged conspiracy, and it was his misinformation about Cities becoming a participant in the Consortium which confirmed that suspicion. The other asserted facts, known to plaintiff before he heard of the Kuwait contract, did not then give rise to a claim of conspiracy even in Mr. Waldron's mind (6076-77; 6357-58), and they do not do so now in any rational mind. They did not then, and they do not now, raise any inference of agreement or combination by Cities Service with any alleged conspirator.

THE UNDISPUTED FACTS OF RECORD, INCLUDING THOSE RELIED UPON BY PLAINTIFF, DEMONSTRATE THAT THE MOTION FOR FURTHER DISCOVERY SHOULD BE DENIED AND THE MOTION FOR SUMMARY JUDGMENT GRANTED

18. Plaintiff makes his motion in the context of a documented record of uncontroverted and incontrovertible facts which demonstrate that Cities Service was not a conspirator at any time.

[12018] 19. The complaint itself alleges that Cities Service was not a conspirator until some time in late August or early September of 1952 (Complaint, ¶ 10(i)(b), p. 19). The facts of record demonstrate that it never became one.

20. The following are the material facts, based upon plaintiff's own testimony and the affidavit of his own counsel as well as the documented record, which demonstrate that every hypothesis which plaintiff could heretofore conceive of to show that Cities had joined the conspiracy has been destroyed:

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Fact	Source
a) In 1952, Cities was "short of crude oil" and "wanted to acquire Middle East production."	Lane Aff., sworn to Sept. 15, 1964, ¶¶ 2(a) and (b).
b) Cities entered into discussions with plaintiff concerning the securing of an invitation from Prime Minister Mossadegh to W. Alton Jones to inspect the Iranian oil fields "with a view to reactivating the Iranian oil industry."	*Id.*, ¶ 2(c).
c) The plaintiff knew that Cities Service was not interested in purchasing oil under his contract but rather in trying to help in reactivating the Iranian oil industry and in resolving the Iranian oil controversy with the hope that it might obtain a long-term supply of Iranian oil.	Waldron Deposition: "Q. It is your judgment that you had such influence with Premier Mossadegh that any name you suggested he would have invited to Iran to take over the Iranian oil industry; is that your testimony? A. Providing the man was capable and had the background in the oil business and had the spirit and intention of helping the Iranians." * * * "Q. Did you have any discussion with Mr. Carter at any time about inviting Mr. Jones [12019] because Cities Service had no financial interest in Middle Eeast oil and therefore Mr. Jones could approach the problem with an open mind? A. Yes, we had discussions with Mr. Carter on it." "Q. What was said, and when was that discussion, Mr. Waldron? A. I believe it was during our first meeting with Mr. Carter. He pointed ouf that Cities Service had no Middle East-

Fact	Source
	ern holdings and wanted to get some, that they were short of oil, and that they had been trying to get into the Middle East for a long time, and consequently Jones would be the man to do the job." (4164-165)
d) Plaintiff obtained an invitation from Mr. Mossadegh for Mr. Jones to visit Iran, and Cities reimbursed plaintiff for his expenses in securing it.	Lane Aff., sworn to Sept. 15, 1964, ¶¶ 2(d) and (f); Waldron Deposition, pp. 4129-131.
e) The invitation was accepted and Jones, preceded by plaintiff and his associates and accompanied by Frame, Heston, Whetsel and Robeson, went to Iran, inspected the refinery, the docks and the oil fields, discovered there had been no sabotage and that they were in good condition, and so reported to the Iranians and to the press.	Lane Aff., sworn to Sept. 15, 1964, ¶¶ 2(h), (i), (j) and (k).
[12020]	
f) Cities Service always considered the cooperation of the British Government and the Anglo-Iranian Oil Company to be essential to the solution of the Iranian controversy, and after reviewing the oil facilities and personnel in Iran found no other practical alternative. Cities Service informed the Iranians that in its opinion British cooperation was necessary for a practical overall solution.	Waldron Deposition: "Q. Did [Mr. Watson] say that Cities Service would not be interested in making any arrangement for Iranian oil unless and until the problems between Iran and Anglo-Iranian was settled? A. I believe he stated that at this meeting, yes." (6329) Pltf's Ex. CS-94, Memo from Mr. Watson to Mr. Jones, dated Aug. 8, 1952, stating the cooperation of

Fact	Source
	the British Government and the Anglo-Iranian Oil Company was essential because: "All the transportation facilities and substantial control of the markets through which oil and products would pass are in British hands." (p. 3)
	Pltf's Ex. CS-107, First draft of report to Prime Minister Mossadegh which was orally delivered by Mr. Jones (Frame Deposition, 10364-66).
	Pltf's Ex. CS-119, Cities Service draft of "Report on the Iranian Petroleum Situation", dated Oct. 31, 1952.
g) Cities concluded that Anglo-Iranian cooperation was necessary in order to secure markets and transportation for Iranian oil.	*Ibid.*
h) Although, given sufficient time, a tanker fleet might be put together to service the Iranian oil industry and markets might be developed, Mr. Jones and other Cities Service personnel concluded that there was insufficient time for Iran to pursue this course.	*Ibid;* Lane Aff., sworn to Sept. 15, 1964, ¶ 2(n).
[12021]	
i) Because of this conclusion, while Mr. Jones was in Iran, and again on the way home, Jones told Waldron and Nelson that the Iranian venture was a "dry hole".	Waldron Deposition, p. 6265; Nelson Deposition, pp. 8302-303.

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Fact	Source
j) Mr. Jones told plaintiff, the Iranians and the press that he was not afraid of British opposition to the reactivation of the Iranian oil industry and the sale of Iranian oil in world markets.	Lane Aff., sworn to Sept. 15, 1964, ¶ 2(m).
k) He did not tell the press that he had concluded that British cooperation was essential and had so advised Mossadegh.	Pltf's Exs. CS-108; B-132; 136-A-M; copies of newspaper stories concerning Mr. Jones' presence in Iran and his statements to the press.
[12022]	
l) Waldron was told by Mr. Lowe that Cities Service would not assist him in any way to sell aviation gasoline from Abadan.	Waldron testified that he was told by Mr. Lowe: "that the Cities Service people would not be interested in assisting us *in any way* to help lift the aviation gasoline from Abadan to Korea." (6310, emphasis added).
m) Carter, however, allegedly believed Mr. Jones would help him do so (and for purposes of this motion we are content to accept this alleged fact as true).	Lane Aff., sworn to Sept. 15, 1964, p. 21.
n) In fact, Mr. Jones took the position that small shipments of Iranian oil would only complicate an already complicated situation, and so advised Secretary Chapman.	Lane Aff., sworn to Sept. 15, 1964, p. 22; Pltf's Exs. CS-125A and B, letters to incoming Secretary of State and Attorney General of the United States, in which Mr. Jones said: "You already know my views on this subject and you understand that I feel that small purchases of Iranian oil cannot possibly solve the complicated problem and would no doubt tend to complicate it further."

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Fact	Source
o) Upon Jones' return from Iran, plaintiff was told that Cities Service's activity in Iran was "in abeyance"; that Cities Service was "not interested now"; that "the situation might open up".	Waldron Deposition, p. 6334.
p) Cities Service maintained its interest in Iranian oil and its contacts with Iran after Jones' trip to Iran:	Lane Aff., sworn to Sept. 15, 1964, p. 20: "It does not happen to be the fact, however, that Cities lost interest in Iranian oil. . . . Jones continued to take a 'keen interest' in Iranian oil. . . ."
[12023]	
q) Jones maintained continued friendly relations with the Iranians.	Exs. 60-70, 72-74, 76-81 annexed to Supplemental Affidavit of George H. Hill, Jr. in support of motion for summary judgment, sworn to May 20, 1960.
r) In addition, Cities Service persisted in its efforts through the State Department to facilitate an Iranian solution, including securing an opinion from John W. Davis concerning the legality of the Iranian nationalization and forwarding that opinion to the incoming Secretary of State and Attorney General.	*Id.*, Exs. 72 and 73.
s) In February 1954, a year and a half after Cities Service is claimed to have joined the alleged conspiracy, two of its high officials, Hill and O'Brien, told Herbert Hoover, Jr., the Under Secretary of State in charge of	Pltf's Ex. CS-40.

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Fact	Source
the Iranian problem, that the proposed Iranian Oil Consortium was subject to serious challenge because it created "a monopoly of substantially all world oil reserves in a few large companies." According to Hill, Mr. Hoover "agreed that this was bad. . . ." Hill and O'Brien told Hoover 'that we agreed with free enterprise thoroughly but felt that any plan was subject to criticism which did not furnish an equal opportunity to the 'have-nots'."	
[12024]	
t) Cities was treated like every other independent "have-not" insofar as securing a participation in the Consortium.	Exs. 29 through 59 to affidavit of George H. Hill, Jr. in support of motion for summary judgment, sworn to March 31, 1960.
u) The acquisition of an opportunity to participate in the Consortium was not a reward to Cities for giving up its interest in Iranian oil.	*Ibid.*
v) To the contrary, as pointed out above, Cities fought to obtain a greater participation in the Consortium, privately challenged it as monopolistic, and ultimately decided to assign its miniscule share to Richfield.	*Ibid.*
w) The Kuwait contract was not a bribe to Cities to induce it to give up its interest in Iranian oil. The inception of the Kuwait contract long antedated Waldron's interest in Iran and its essential terms had been agreed to prior to Waldron's first contact with Cities Service.	*Id.*: Exs. 1 through 28.

[12025] ON THESE UNDISPUTED FACTS PLAINTIFF HAS NO CLAIM AGAINST CITIES SERVICE FOR ALLEGED CONSPIRACY AND PLAINTIFF'S ATTORNEY'S ARGUMENTS DO NOT DEMONSTRATE THE EXISTENCE OF ANY SUCH CLAIM.

21. Plaintiff's attorney, Mr. Lane, in his moving affidavit, adds some evidentiary data to these undisputed facts (e.g., ¶ 2(e)—the alleged secrecy enjoined by Cities upon Waldron; ¶ 2(g)—the alleged effort to give the invitation the appearance of spontaneity; ¶ 2(o)—Waldron's attempt to amass a tanker fleet) and otherwise disregards the inevitable conclusion that the undisputed facts demonstrate that Cities was not a conspirator.

22. In addition, he asserts arguments which are based upon alleged facts which his own client has testified are untrue. Thus, while acknowledging that Cities' interest in Iranian oil continued in October (Lane Aff., sworn to Sept. 15, 1964, p. 20) Mr. Lane argues that in October 1952, when Waldron returned to New York, plaintiff was told "that Cities had no interest in Iranian oil" (*Id.* at ¶ 2(p)). This argument is directly contradicted as a matter of fact by plaintiff himself, as we pointed out above. Plaintiff summarized his conversations with Cities Service personnel in October as follows:

> "In view of Mr. Watson's statement and the general situation we realized that the—we felt that the thing was *in abeyance*. Mr. Watson said on several occasions they were not interested *now*. Mr. Whetsel kept telling us *the situation might open up*." (6334, emphasis added)

23. And Mr. Lane argues that after October 1952 "Cities interfered with plaintiff's efforts to market Iranian

oil" (Lane Aff., sworn to Sept. 15, 1964, ¶ 2(q). This is an argument which plaintiff himself has acknowledged cannot properly be stated in the form of an allegation of fact. Indeed, the very record references which Mr. Lane uses to support his argument show that Waldron testified that he had no evidence that Cities Service had interfered with his attempt to sell oil to the Richfield Company, either at the time he drafted his complaint or at the time of his deposition (6087).

[12026] 24. Plaintiff's attorney has now examined Mr. Watson, Mr. Frame, Mr. Hill, and Mr. Heston, and he still has no evidence whatsoever of any communication whatsoever between Cities and Richfield relating to Waldron. There is thus not a single evidentiary fact to support the argument advanced by plaintiff's attorney.

25. At a later point in Mr. Lane's affidavit, a completely different ground is advanced as support for the proposition that Cities Service "interfered" with plaintiff's efforts to market Iranian oil.

26. Mr. Lane argues at pages 21-23 of his affidavit that Mr. Jones misled Mr. Carter into believing that he, Mr. Jones, would assist Mr. Carter in trying to obtain a necessary clearance from the State Department for the sale of Iranian aviation gasoline to an agency of the United States Government, and that Mr. Jones instead cabled to Mr. Watson, asking him to contact Oscar Chapman, Secetary of the Interior, and to tell him that Jones seriously questioned the wisdom of such action, and did not want to be connected with it in any way.

27. The claimed "interference" thus consists of two elements: (1) Mr. Carter's supposed belief that Mr. Jones was

willing to assist him in trying to sell aviation gasoline from Abadan; and (2) Mr. Jones' actual belief that Mr. Carter's idea was not a wise one, that he did not wish to be associated with it, and his reporting of these views to Chapman.

28. But what does this claimed "interference" have to do with an allegation of conspiracy? The record demonstrates that in fact it was Mr. Jones' belief that small purchases of Iranian oil would only tend to complicate the Iranian problem even further. (See ¶ 20(n) above, quoting from Jones' letters to John Foster Dulles and Herbert Brownell.)

[12027] 29. And the record is undisputed that, after this claimed interference, Cities Service was not a party to any conspiracy with the other defendants, privately attacked the arrangements which were proposed for the solution of the Iranian oil controversy as monopolistic, privately complained that the "have-nots" were being unfairly dealt with, and had to fight its way along with all other independents who sought a participation in the Iranian Oil Consortium in order to obtain even a miniscule share. As plaintiff's attorney himself put it:

> "[I]n fact, Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies (Pltf's Ex. CS-40.)." (Lane Aff., sworn to Sept. 15, 1964, p. 20).

30. In light of this concession, whatever speculations plaintiff's counsel may engage in concerning the inferences to be drawn from the claimed "interference" (and we note

that on its face the telegram from Jones to Watson requesting Watson to advise Chapman of Mr. Jones' views is contemporaneous, documented, uncontradicted proof of the motives which led to Mr. Jones' action) the explanation is concededly not that Cities joined the alleged conspiracy.

31. Finally, the supposed deception however arguable as to Mr. Carter is simply not true as far as the plaintiff is concerned. Waldron testified that he himself asked Cities for assistance in the possible sale of Iranian aviation gasoline and was told by Mr. Lowe that there would be no help forthcoming. (See ¶ 20 (1) above).

32. But what is most significant from Mr. Lane's affidavit is that, even conceding every argument as to the state of the record as it now stands, plaintiff has conceded that every alleged motive, inducement or persuasion to Cities Service to join the alleged conspiracy is without basis in fact. In short, every hypothesis of guilt which plaintiff has heretofore been able to conceive of has been negated by the documentary record, plaintiff's own testimony, or his attorney's own concessions.

[12028] THE FEAR MOTIVE IS ELIMINATED BY PLAINTIFF HIMSELF

33. That Cities was not induced to join a conspiracy through fear is now conceded:

> "Jones was not afraid of British retaliation." (Lane Aff., sworn to Sept. 15, 1964, p. 19).

THE BRIBE MOTIVE IS ELIMINATED BY THE UNDISPUTED RECORD

34. That Cities Service was not bribed to enter any conspiracy is now conceded. Mr. Lane's affidavit contains

not a single word about the Kuwait contract being an alleged inducement to enter any conspiracy and the Hill deposition as well as the documentary record demolish the claim. Hence plaintiff's silence on the issue.

THE REWARD MOTIVE IS SIMILARLY ELIMINATED

35. That Cities Service was not rewarded for joining any conspiracy through participation in the Iranian Oil Consortium is also conceded:

> "[I]n fact, Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies (Pltf's Ex. CS-40.)." (Lane Aff., sworn to Sept. 15, 1964, p. 20).

36. These concessions are not surprising, in view of the overwhelming documentation which eliminates fear of retaliation, and the Kuwait contract and the Consortium as possible inducements to conspiracy.

THE "CHANGE OF POSITION" CLAIM—THAT CITIES LOST INTEREST IN IRAN AFTER OCTOBER 1952—IS NOT ONLY ABANDONED, BUT REVERSED

37. What is most surprising is the actual *reversal* of the basic premise with which plaintiff had previously sought to avoid the effect of the elimination of bribery, fear and reward as [12029] motivating Cities in joining the alleged conspiracy. That all-important premise, previously advanced by plaintiff in affidavit after affidavit and argument after argument was that Cities Service suddenly and mysteriously abandoned its interest in Iranian oil (Lane

Aff., May 6, 1960, p. 4; Minutes of Oral Argument, May 9, 1960, pp. 140-43, May 27, 1963, pp. 12-14), and that this "change of attitude," this "180-degree turn," raised an inference of conspiracy.

38. Now we find that it is *plaintiff's argument* that *Cities Service did not drop its interest in Iranian oil:*

> "It does not happen to be the fact, however, that Cities lost interest in Iranian oil." (Lane Aff., Sept. 15, 1964, p. 20).

39. Which party made a "180-degree" turn in this case? Who had a mysterious "change of attitude?"

40. Only the plaintiff.

41. Since plaintiff now agrees that Cities Service did not lose its interest in Iranian oil, plaintiff's last "gossamer inference," drawn as it was on a non-existent premise, has now disappeared.

42. What, then, is left of plaintiff's "claim" against Cities?

43. The bribe is gone.

44. The reward is gone.

45. The alleged fear is denied by plaintiff himself.

46. The suspicion as to the Richfield transaction remains wholly unsupported by a single fact and in any event is irrelevant to the alleged conspiracy.

47. How is Cities claimed to have become a member of the alleged conspiracy?

48. All of Cities' undisputed conduct affirmatively demonstrates that it was not a party to any conspiracy—and there is not a shred of a claim, or a shred of evidence, to the contrary.

[12030] 49. Thus, Cities is claimed by plaintiff somehow to have become a participant in the conspiracy in the fall of 1952. Yet, after that date we find continued interest in Iranian oil, continued friendly relation with the Iranians, continued efforts with the State Department to facilitate an Iranian solution, the securing of an opinion from John W. Davis and its distribution to the incoming Attorney General and the Secretary of State in the Eisenhower Administration, representations by Cities Service to the State Department in February of 1954 in which Cities firmly asserted an antimonopolistic position and challenged the proposal which became the Iranian Oil Consortium as being unfair to the "have-nots" (strange conduct for a conspirator!), and, although Cities is supposed by plaintiff to have become a member of the International Oil Cartel, whose history is alleged at great length in the complaint, Cities was treated as was every other independent insofar as securing a participation in the Consortium.

50. In short, we are dealing not only with an absence of evidence of conspiracy but undisputed, indisputable, documentary evidence that Cities did not become a part of the alleged Cartel, or make "common cause" with the alleged conspirators.

51. Indeed, it defies rational understanding how plaintiff can continue to claim, albeit weakly, that Cities Service joined the alleged conspiracy in light of the conceded and documented record of its post-October 1952 conduct.

52. Plaintiff's "claim" is spurious, feigned, concocted, and does not give rise to any material issues to be resolved at any trial.

PLAINTIFF IS NOT ENTITLED TO DISCOVERY WITHOUT A GENUINE MATERIAL ISSUE OF FACT

53. On these facts, the conclusion is clear that plaintiff's motion for discovery is based on a still unsatisfied curiosity about whether there could possibly be some other reason for suing Cities Service. The short and complete answer to his motion is that he needs a claim against a defendant before he can examine a defendant.

[12031] 54. The documented record is undisputed that, if there were a conspiracy as plaintiff claims, Cities never joined it. In light of its conceded and documented post-October 1952 conduct which is summarized above it is preposterous to suggest that it did. Plaintiff does not point to a single fact which evidences joining the conspiracy. He disregards the dozens of facts which are undisputed and indisputable which demonstrate that Cities never joined the alleged conspiracy.

55. Instead, plaintiff's attorney asserts a variety of plaintive arguments, such as

> Jones must have been stopped or induced to give up Cities Service's alleged opportunity in Iran (Lane Aff., Sept. 15, 1964, p. 24);

The limitation of time placed upon the scope of the depositions should be extended (*Id.* at p. 26);

There was criticism of Jones among certain segments of the oil industry for his trip to Iran (*Id.* at p. 27);

Jones, Watson and Hill had conversations with others concerning Iranian oil after October or November 1952 (*Id.* at p. 28);

Documents after November 1, 1952 have been produced in support of Cities Service's motion (*Id.* at pp. 28-9);

A written statement was prepared by one witness but was not produced (it did not relate to the subjects of the deposition) (*Id.* at p. 29).

But all these arguments are irrelevant to any material issue in this case.

[12032] 56. In the light of the uncontradicated evidence that there was no bribe, no reward, no fear, no change in position, no conspiratorial action, and that there was anti-conspiratorial action, what conceivable difference does it make whether Mr. Jones was criticized in the oil industry? (If he had not been criticized undoubtedly plaintiff's attorney would argue that this was some evidence of conspiracy.)

57. In the light of this record of undisputed facts, what conceivable difference does it make whether there were conversations after November 1, 1952 with Nakasian, Saleh, Henderson, Dulles, or anyone else concerning Iran? (If there were no such conversations plaintiff's attorney would probably once again argue about a mysterious loss

of interest.) And since when can the uncontradicted documentary record be overcome by an attorney's argument that something "must" have happened when the evidence shows it did not?

58. As an attempted excuse for once again failing to specify any claim against Cities Service, plaintiff has complained that our production of documents was limited to those documents which on their face were communications between deponents and employees of Cities Service or between Cities and another defendant (Lane Aff., Sept. 15, 1964, pp. 25-6). This is nonsense.

59. Plaintiff's counsel have been carried away by their idea that they were entitled to see every document in our files and themselves determine, after examining the deponents, whether a document should be produced. We, of course, produced all those documents which in our judgment constituted communications, whether or not they appeared to be so on their face. (See, *e.g.*, Pltf's Exs. CS-93-5, 100, 103, 106-7, 115, 118-19.)

60. The same type of completely unfounded complaint is the astonishing contention that Mr. Jones' files have not been produced to plaintiff. (Lane Aff., Sept. 15, 1964, p. 33). In fact [12033] documents from Mr. Jones' files have of course been produced whenever they were relevant to the subjects of plaintiff's examinations. Mr. Lane's affidavit itself demonstrates this, for by the time Mr. Lane reaches page 33 of his own affidavit (and asserts that Mr. Jones' files have "thus far not been produced") he himself has already referred to at least eight documents which clearly come from Mr. Jones' files: CS-94, p. 8; CS-95, p. 10; CS-

124, 125A, B, p. 15; CS-137, p. 18; file copy of letter to Ambassador Henderson, p. 28; file copy of letter to Premier Mossadegh, p. 29. In addition, Mr. Lane attaches as exhibits to his own affidavit, copies of two documents produced from Mr. Jones' files (Lane Aff., Sept. 15, 1964, Exs. A and C). And on the original motion for summary judgment Exhibits 62 through 77 inclusive and 80 and 81 to the supplemental affidavit of George H. Hill, Jr., sworn to May 20, 1960, are in the same category.

61. Plaintiff's counsel also complains that defendant's objections to questions propounded to the witnesses, delving into such remote issues as the acquisition by Cities of concessions (see, *e.g.*, Lane Aff., Sept. 15, 1964, p. 31), efforts by Cities to obtain a participation in a Consortium other than the Iranian Oil Consortium (Id. at p. 30), and the like, were arbitrary and unreasonable. Yet plaintiff still fails to point out any theory whatsoever on the basis of which these areas of inquiry have any relevance whatsoever to plaintiff's claim against Cities.

62. The only purported justification for such examination is that plaintiff and his counsel are curious. No other justification has as yet been suggested. But curiosity does not give one a license to examine a defendant in the absence of a claim against that defendant. The only true motivation is the hope that Cities will weary and pay off. The hope which supports this motive is doomed to disappointment.

[12034] 63. In addition, plaintiff suggests that Mr. Watson did not testify that there were no communications between Cities Service personnel and other defendants but only that he knew of none (Lane Aff., Sept. 15, 1964, p. 24).

Of course, the fact is that all that Mr. Watson or any witness could testify to was that he knew of no such communications. Watson, Heston and Frame so testified. How this can be transformed into a suspicion that there were such communications escapes us.

64. Finally, plaintiff complains of counsel's refusal to permit him to expand the Court's order which limited plaintiff's examination to conversations between Cities Service and any other defendant. Plaintiff's attorney would like to examine concerning conversations between Cities Service and Mr. Jan A. G. Sandberg, a large stockholder in Cities Service who, plaintiff's attorney now asserts, is "a member of the Finance Committee of Royal Dutch Shell" (Lane Aff., Sept. 15, 1964, p. 30). Plaintiff's attorney further asserts that "Royal Dutch Shell" is a co-conspirator named in the complaint (*Ibid.*)

65. First of all, it is essential to attempt to ascertain what company Mr. Lane is talking about. For the complaint does not allege that "Royal Dutch Shell" is a co-conspirator. Indeed, plaintiff's complaint does not refer to any entity called "Royal Dutch Shell." Paragraph 10(a) of the complaint identifies as "Royal Dutch" the Royal Dutch Petroleum Company, and as "Shell" The Shell Transport and Trading Company.

66. We will accordingly assume that Mr. Lane is talking about one or the other or both of these companies.

67. Secondly, as in the cases of Kuwait and Consortium, apparently plaintiff or his attorneys have predicated their claim on a scrap of misinformation which has come to their attention. For the fact is that Mr. Jan A. G. Sand-

berg, the Cities Service stockholder [12035] to whom reference is made, has never been, is not now, and was not in 1952 a member of the Finance Committee of either of these two companies; nor is he or was he an officer, agent or employee of either of them, or of any of their subsidiaries or affiliates.

68. Mr. Sandberg, I am informed and believe is presently on vacation in the Italian Alps and cannot be reached. I am informed and believe that, in response to inquiries to the "Royal Dutch Shell" group in New York as to Mr. Sandberg's alleged relationship to those companies, Cities Service was advised that he had had no such relationship at any time; and specific inquiry to Mr. Sandberg's secretary, who has been with him for many years, as to whether Mr. Sandberg has ever held any position with Royal Dutch Shell, and specifically as to whether he had been an officer, director, member of the Board or on its Financial Committee during the period 1952 through 1954, resulted in a reply, copy of which is annexed hereto as Exhibit A, stating that Mr. Sandberg has never had any such position and, specifically, that he was not an officer, director, member of the Board or Financial Committee in 1952, 1953 or 1954. In addition, I am also informed and believe that a search made by Mr. Connolly and Mr. MacMurray, of the Central Inquiry Office of Standard & Poor's, has revealed that the annual reports of Royal Dutch Petroleum Company and Shell Transport and Trading Company, Ltd. do not list Mr. Sandberg as having any position or connection with these companies in the years 1952, 1953, 1954 or 1964.

69. Accordingly, once again plaintiff's attorneys have leaped into the great void which constitutes plaintiff's claim

against Cities, apparently seized upon a scrap of misinformation, and out of it sought to manufacture a new theory on the basis of which plaintiff's non-existent claim against Cities could be given a semblance of life.

70. Incidentally, plaintiff's attorneys are also in error when they say that "Royal Dutch Shell" is a co-conspirator [12036] "named in the complaint."

71. The complaint can be read from beginning to end without discovering any allegation whatsoever, in any shape, manner or form, which claims that Royal Dutch Shell was a co-conspirator. To the contrary, the conspiracy is alleged to have been one between the named defendants and other unidentified "companies and persons" (Complaint, ¶ 9) and, while Royal Dutch Petroleum Company and The Shell Transport and Trading Company are mentioned in the complaint (see, *e.g.*, ¶¶ 10(a), 10(b), 10(c), 10(d), 10(e), etc.) they are nowhere identified as alleged co-conspirators. And when plaintiff purports to describe the alleged conspiracy directed against him in paragraph 10(i), there is absolutely no mention whatsoever of either company as a co-conspirator or otherwise.

72. It is true that the amended complaint refers to an unidentified entity called the "Royal Dutch/Shell Group" as a co-conspirator, but the document which names such a "Group" was served long after the motion for summary judgment was made. In any event, whether or not "Royal Dutch Shell" is named as a co-conspirator is of no moment because once again plaintiff was simply wrong in the conclusion to which he leaped—that Sandberg was a member of the "Royal Dutch Shell" Finance Committee in 1952,

or at any time, or was an officer, director or employee of "Royal Dutch" or "Shell," or of any of their subsidiaries or affiliates.

73. Finally, the order pursuant to which the depositions were had clearly and properly limited plaintiff to communication between Cities Service and other defendants. No motion to resettle that order was ever made, and defendant's objections were accordingly well taken.

74. In these circumstances, it is clear that plaintiff's attorney has attempted to create some conceivable basis for further [12037] harassing Cities Service by examining it concerning communications between its chief executive and one of its major stockholders twelve years ago.

75. This attempt is made in the face of the uncontroverted, documented record which shows that Cities Service was not a conspirator.

76. Finally, the most shocking and disturbing aspect of plaintiff's effort to subject Cities Service to further harassment is the argument found in paragraph 9 of Mr. Lane's affidavit, in which he in effect asserts that, notwithstanding the absence of any claim against Cities, and notwithstanding the documented record which demonstrates that Cities Service was not a conspirator, Cities Service should nevertheless be directed to produce all of its files for plaintiff's examination.

77. What plaintiff seeks is power broader than the criminal jurisdiction of the Department of Justice in antitrust matters. There at least some semblance of a claim is necessary before the awesome power of the Grand Jury

may be invoked to require the wholesale production of files. In the case at bar, plaintiff's attorney sees himself as Department of Justice and Grand Jury rolled into one. Unless, says plaintiff's attorney, Cities Service turns over its files to plaintiff, plaintiff will never cease to harass Cities!

78. Indeed, the request for production and for further examination does not even purport to be relevant to any claim against Cities because no claim has been delineated. Instead, wholesale production of Cities' files is demanded, and wholesale, unlimited, untrammeled deposition of other defendants is requested. This in a case in which this Court held, in 1961, that "It is doubtful in the extreme whether plaintiff" had any claim against Cities, that the "naming of Cities Service Co. as a defendant" was based on "suspicion and on a gossamer inference", and that plaintiff's claim [12038] was so "insubstantial" that "plaintiff will not be given carte blanche authority to conduct untrammeled pre-trial proceedings" (Opinion, March 30, 1961).

79. The law, we submit, is clear that Cities Service is under no obligation, either to plaintiff or his attorney, nor to anyone else, in light of the documented record which demonstrates there is no claim against Cities, to turn over its files to plaintiff.

Conclusion

80. Plaintiff's unjustified suspicions and untrammeled curiosity have already cost defendant Cities Service vast sums in defending this wholly unjustified lawsuit. There must come a point when plaintiff's curiosity must find its resolution by some method other than continuing to ask

questions of a defendant which are wholly irrelevant to any claim against that defendant.

81. Plaintiff has no claim against Cities Service. Insofar as plaintiff seeks further discovery, it is clear that plaintiff either seeks discovery relevant to nothing (as in the case of Carter) or that plaintiff hopes to find information which might possibly be useful in connection with his claims against other defendants.

82. In these circumstances, defendant Cities Service is not properly a party to this case. If, in connection with plaintiff's preparation for trial against other defendants, he desires to examine Cities as a witness, rather than as a defendant, he should pursue his right to do so (to the extent that he has not already covered the ground) under the Federal Rules, after the motion for summary judgment is granted.

83. Four and a half years have now been expended in permitting plaintiff to determine whether his suspicion and gossamer inference against Cities could somehow be underpinned with a rational basis. We respectfully submit that the record now before the Court [12039] demonstrates that there is no genuine issue as to any material fact and that no cause has been shown which would justify further expense or delay, and that plaintiff's complaint against Cities Service should be dismissed.

(Sworn to by Simon H. Rifkind on October 16, 1964.)

Exhibit A—Telegram from Secretary of J. A. G. Sandberg

[12040] WESTERN UNION TELEGRAM

G*

CITEX NYK

WUCDNYK

WUCDA122 ZM223 44/41 PD INTL FR

CD ZM SGRAVENHAGE VIA WUCABLES 5 1707
CITSERCO

NYK

FOR MR CHARLES S MITCHELL
JONKHEER J A G SANDBERG HAS NEVER HELD ANY POSITION WITH ROYAL DUTCH SHELL NOR HAS HE BEEN AN OFFICER DIRECTOR MEMBER OF THE BOARD OR ON FINANCIAL COMMITTEE DURING NINETEEN FIFTYTWO NINETEENFIFTYTHREE NINETEENFIFTYFOUR

HELDRING.
1259P EDT..*

CITEX NYK

Supplementary Affidavit of Simon H. Rifkind, November 3, 1964

[12042] UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

SIMON H. RIFKIND, being duly sworn, deposes and says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant Cities Service Co. in this action. I submit this affidavit in order to request the Court to consider the attached affidavit of Jan A. G. Sandberg in connection with Cities Service's motion for summary judgment and in opposition to plaintiff's cross-motion for additional discovery.

2. Plaintiff's cross-motion for additional discovery relies in part on the contention that Mr. Jan A. G. Sandberg was or is a member of the Finance Committee of Royal Dutch Shell (Lane Aff., September 15, 1964, p. 30). In opposing plaintiff's cross-motion for additional discovery, I explained at page 30 of my affidavit of October 16, 1964 that all the information available to me at that time indicated that Mr. Sandberg had never held any position with the Royal Dutch Shell Group, but that I could not obtain any direct information from Mr. Sandberg because he was then on vacation in the Italian Alps and could not be reached.

Supplementary Affidavit of Simon H. Rifkind, November 3, 1964

3. I have recently received the attached affidavit of Mr. Sandberg, sworn to October 26, 1964, which is directly pertinent to the question of Mr. Sandberg's alleged relationship to the Royal Dutch Shell Group.

4. I respectfully request that the attached affidavit be received and considered by the Court in support of Cities Service's motion for summary judgment and in opposition to plaintiff's cross-motion for additional discovery.

(Sworn to by Simon H. Rifkind on November 3, 1964.)

Affidavit of Jan A. G. Sandberg, October 26, 1964

[12044] UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

WASSENAAR, HOLLAND, to-wit:

JAN A. G. SANDBERG, of lawful age, being first duly sworn, upon his oath states:

I am a resident of Wassenaar, Holland and my post office address is De Vrise Blick, Hartleaan 14.

I am not now nor have I ever been a director, officer, or member of any corporate committee, or employee of the Royal Dutch Petroleum Company or The Shell Transport and Trading Company or of any of their subsidiaries or affiliates.

(Sworn to by Jan A. G. Sandberg on October 26, 1964.)

Excerpts from Plaintiff's Reply to Cities Service's Submission In Support of its Summary Judgment Motion, November 4, 1964.

[12171] We should, perhaps, point out that what Jones is quoted as having said at the press conference [in September, 1952] is perfectly consistent with an intention on his part to run the Iranian oil industry with or without British cooperation in transportation and marketing. It would have been a bigger show with British cooperation than without, and if Jones said what Frame and Watson, who were not there, say he said to Mossadegh about the advisability of securing British cooperation (10365, 10714), he laid the groundwork for the bigger show. By saying in public that he was not particularly worried by British threats, he conveyed to the British his intention to run the operation with or without their [12172] cooperation. Everything that he said on that occasion makes complete sense and can be easily understood when considered in the light of Watson's "Secret-Draft-Secret" memorandum of August 8, 1952, written before Jones went to Iran (Pltf.'s Ex. CS-94), and Jones' final draft report to Mossadegh of October 31, 1952, written after Jones returned from Iran (Pltf.'s Ex. CS-119).

We do not deny that one inference to be drawn from Jones' remarks to the press in Tehran on September 18, 1952, if one is to proceed on inferences where summary judgment is sought, is that the remarks appear to be a kind of declaration of independence inconsistent with the captive status of a conspirator. That would only mean, in our judgment, that Jones had not yet fallen off the fence. Plaintiff does not claim that Jones was acting on behalf of a conspiracy when he sought the invitation, or when he went to Iran, or when he held his Tehran press conference, or when

Excerpts from Plaintiff's Reply to Cities Service's Submission In Support of its Summary Judgment Motion, November 4, 1964:

he wrote the conclusions to his final draft report on October 31, 1952 (Pltf.'s Ex. CS-119). We cannot say when the first contact was made with him by those from whom he sought to conceal his trip to Iran because it was obviously hostile to their interests. We can only speculate, at this point, whether Jan Sandberg was the avenue of communication. We do have good reason to believe that the heat was on Jones at the time of the annual banquet of the A. P. I. in early November, [12173] 1952, (10422-5), and the fact seems to be that he held back and never did send out the final report of October 31, 1952 (Pltf.'s Ex. CS-119) to Mossadegh (10728).

* * *

[12181] The concluding 26 paragraphs in a section of the [Rifkind] affidavit intended to demonstrate that plaintiff is not entitled to discovery because there is no genuine material issue of fact to try must fall of its own weight, for there is obviously a very considerable area for discovery and we [12182] are not yet at the stage of framing issues. Instead of taking issue with all the arguments contained in this section, we stand on our moving affidavit.

We do not understand how we could have been so misinformed about Sandberg's connection with the Royal Dutch Shell Group. Obviously we cannot be expected to answer on November 4, 1964, an affidavit served on us on November 4, 1964, concerning a gentleman in Amsterdam but we intend to look into the matter. There must have been some substantial connection between Sandberg and Royal Dutch or Watson would not have supposed he had had a position on the Finance Committee (10692).]

* * *

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VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 23

PATRICIA WALDRON, ETC., PETITIONER,

vs.

CITIES SERVICE CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 3, 1966
CERTIORARI GRANTED JANUARY 16, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

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[fol. A]

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civ. 110-223

DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
June 11—56	Filed Complaint
Jun. 19—56	Filed summons & return. Served all defts except Gulf Oil Corp on 6-12-56. Served deft Gulf Oil Corp. 6-15-56.
Jun. 27—56	Filed Answer of Deft. Socony Mobil Oil Co, Inc.
Jun. 27—56	Filed Notice of Taking Deposition of Pltf.
Jun. 29—56	Filed Deft's The Texas Co. Notice of appearance.
Jun. 29—56	Filed Deft. British Petroleum Co., Ltd. Notice of appearance.
Jun. 29—56	Filed Notice of taking deposition of Pltf.
Jun. 29—56	Filed Order extending time of Deft. Guld Oil Corp to answer to 9-30-56. Levet, J.
June 28—56	Filed affdvt & show cause order—extend time of deft Socony Mobil Oil to answer to 10-30-56—Ret. 7-3-56.
June 28—56	Filed affdvt & show cause order—extend time of deft. British Petr. Co. to answer to 10-30-56—Ret. 7-3-56.

[fol. B]

June 28—56	Filed affdvt & show cause order—extend time of defts. Cities Service, Standard Oil Co. of Calif. & Standard Oil Co. (NJ) to answer to 10-30-56—Ret. 7-3-56.
July 2—56	Filed notice of taking deposition of Pltf.

DATE	FILINGS—PROCEEDINGS
July 3—56	Filed Affdvt of Service & Deft's Notice of Appearance for The Texas Co.
July 6—56	Filed affdvt. of S. M. Lane in opposition to motions to extend time to answer.
July 3—56	Memo endorsed on show cause order filed 6-28-56. Time extended as indicated, see memo. Weinfeld, J.
July 11—56	Filed order extending time for defts. to ans. etc. see order. Weinfeld, J. Mailed notice of entry. 7-12-56.
July 13—56	Filed Deft's Cities Service Co. notice of appearance.
July 13—56	Filed Deft's Cities Service Company appearance.
Aug. 13—56	Filed Stip. & Order extending time to answer to 30 days after completion of taking of deposition of pltf. Waldron, Walsh, J.
Aug. 15—56	Filed Stip. & Order substituting Paul Weiss Rifkind Wharton & Garrison & O'Brien and Park Holland, Jr. as attys. for deft. Cities Service, in place of atty. O'Brien—
Aug. 24—56	Filed Notice of taking deposition of Pltf.
Aug. 24—56	Filed Notice of appearance for deft. British Petroleum Co., Ltd.
Aug. 29—56	Issued Additional summons.
Aug. 31—56	Filed Pltf's Interrogs.
Sept. 20—56	Filed Additional Summons & Return—Served Standard Oil Co. of Calif. on 9-5-56
Aug. 20—56	Filed affdvt & show cause Order—Vacate & set aside service upon deft Standard Oil Co. of Calif. & dismissing as to said deft.—ret. 9-25-56.

DATE	FILINGS—PROCEEDINGS
Oct. 9—56	Filed Stip & Order adjourning motions of objection to interrogs to 10-18-56. McGohey, J.
Oct. 10—56	Filed notice of filing appearance.
Oct. 10—56	Filed notice of taking deposition of R. S. Nelson.
Oct. 2—56	Filed affdvt & notice of motion to eliminate, strike out or modify certain interrogatories, etc.—ret. 10-18-56.
Oct. 17—56	Filed Stip & Order adjourning motions of objection to interrogs to 11-1-56. Edelstein, J.
Sept. 25—56	Filed Affdvt & Notice of motion to vacate service of process, etc. Ret. 10-25-56.
[fol. C]	
Nov. 16—56	Filed notice of taking deposition of James A. Bently; James E. Zoes and Ray Carter.
Dec. 4—56	Memo endorsed on motion filed 10-2-56—Marked off—Bicks, J.
Dec. 11—56	Filed stip. & order modifying pltff's interrogs to Standard Oil Co. of Calif. Nos. 15, 16, etc.—Bicks, J.
Jan. 11—57	Filed Answers to interrogatories by deft Standard Oil Co. of Cal.
Jan. 16—57	Filed stip. & order adjourning deposition of J. A. Bentley to 4-15-57, etc.—Ryan, J.
Jan. 16—57	Filed stip. & order adjourning deposition of J. E. Zoes to 4-16-57, etc., Ryan, J.
Jan. 21—57	Filed Stip. & order adjourning deposition of Ray Carter to date as indicated. Weinfeld, J.

DATE	FILINGS—PROCEEDINGS
Jan. 31—57	Filed stip. & order adjourning deposition of R. S. Nelson to 4-4-57, etc.—Weinfeld, J.
Feb. 1—57	Filed stip. & order adjourning show cause order & supplemental motion to 2-14-57. Weinfeld, J.
Feb. 6—57	Filed order—motion to modify subpoena as indicated; records indicated to be produced; exam. to commence 2-12-57, etc.—Weinfeld, J.—Mailed notice of entry 2-7-57.
Feb. 6—57	Filed unsigned direct order.
Mar. 18—57	Filed Opinion #23,336. Motions to dismiss for improper venue and to vacate purported service of process denied—So ordered—Dawson, J. Mailed notice of entry 3-18-57.
Mar. 19—57	Filed transcript of record of proceedings of Feb. 14—57.
Mar. 19—57	Filed affdvt. of J. F. Caskey.
Mar. 19—57	Filed supplementary affdvt. of S. M. Lane.
Mar. 19—57	Filed affdvt. of S. M. Lane.
Mar. 26—57	Filed stip. & order adjourning deposition of Ray Carter to 6-6-57.—Noonan, J.
Mar. 28—57	Filed transcript of record of proceedings of Feb. 14, 1957.
Mar. 28—57	Filed stip. & order adjourning depositions of R. S. Nelson to 6-3-57—Noonan, J.
Apr. 2—57	Filed stip. & order adjourning deposition of Jas A. Bentley to 6-4-67, etc.—Murphy, J.
Apr. 11—57	Filed stip. & order substituting Cahill GR&O as attys for deft Standard Oil Co. of Calif. for Dwight RHK&C.

DATE	FILINGS—PROCEEDINGS
Apr. 15—57	Filed stip. & order extending time of deft Standard Oil Co. of Calif. to answer until 30 days after completion of taking pltff's deposition, etc. Murphy, J.
[fol. D] 1957	
May 21	Filed stip. & order adjourning deposition of J. A. Bentley to 10-8-57, etc.—Cashin, J.
May 21	Filed stip. & order adjourning deposition of J. E. Zoes to 10-9-57, etc.—Cashin, J.
May 21	Filed stip. & order adjourning deposition of R. Carter to 10-10-57, etc.—Cashin, J.
May 22—57	Filed stip. & order adjourning depositions of R. S. Nelson to 10-7-57, etc.—Cashin, J.
Oct. 2—57	Filed stip. & order adjourning deposition of James A. Bently to 11-29-57—Noonan, J.
Oct. 2—57	Filed stip. & order adjourning depositions of R. S. Nelson, et ano to 11-18-57—Noonan, J.
Oct. 2—57	Filed stip. & order adjourning deposition of James E. Zoes to 11-20-57—Noonan, J.
Oct. 4—57	Filed stip. & order adjourning deposition of Ray Carter to 11-21-57—Noonan, J.
Nov. 13—57	Filed stip. & order adjourning deposition of James E. Zoes to 1-22-58—Kaufman, J.
Nov. 13—57	Filed stip. & order adjourning deposition of James A. Bentley to 1-21-58—Kaufman, J.
Nov. 13—57	Filed stip. & order adjourning deposition of Richard S. Nelson, etc. to 1-20-58—Kaufman, J.
Nov. 14—57	Filed stip. & order adjourning deposition of Ray Carter to 1-23-57—Kaufman, J.

DATE	FILINGS—PROCEEDINGS
Jan. 17—58	Filed stip. & order adjourning depositions of R. S. Nelson, et ano to 4-7-58—Sugarman, J.
Jan. 20—58	Filed stip. & order adjourning deposition of James E. Zoes, et ano to 4-21-58—Sugarman, J.
Jan. 21—58	Filed stip. & order adjourning deposition of Jas A. Bently to 4-14-58—Herlands, J.
Jan. 22—58	Filed stip. & order adjourning deposition of Ray Carter to 4-28-58—Herlands, J.
Jan. 2—58	Filed pltff's affdv't & notice of motion to terminate exam. and vacate notices—ret. 1-30-58.
Jan. 31—58	Filed opposing affdvt of Standard (NJ)
Jan. 31—58	Filed opposing affdvt of Socony Mobil Oil.
Jan. 31—58 [fol. E]	Filed opposing affdvt of Standard (Cal.)
Jan. 28—58	Filed opposing affdvt of Gulf Oil.
Jan. 31—58	Filed opposing affdvt of British Petroleum.
Jan. 31—58	Filed opposing affdvt of Texas Co.
Jan. 31—58	Filed opposing affdvt of Cities Service.
Jan. 30—58	Memo endorsed on motion filed 1-2-58—Denied in all respects. Settle order as indicated—Herlands, J.
Feb. 13—58	Filed unsigned counter-order.
Feb. 13—58	Filed order—pltff's motion to terminate exam. etc. denied and taking of testimony of pltff Waldron to continue as indicated, etc.—Herlands, J. Mailed notice of entry 2-14-58. (See memo endorsed re: retention of certain papers, etc.)

DATE	FILINGS—PROCEEDINGS
Feb. 13—58	Filed pltff's memo of law (item 2 of memo on order of 2-13-58).
Feb. 13—58	Filed Items 3, 4, 5, 6 & 7 in memo of 2-13-58. (Letters, etc.)
Mar. 10—58	Filed stip. & order—Exam. of pltff Waldron by Standard (NJ) to begin 4-7-58—Dimock, J.
Mar. 18—58	Filed stip. & order adjourning deposition of James A. Bentley to date in conformity with order Herlands, J.—2-11-58—Noonan, J.
Mar. 18—58	Filed stip. & order adjourning deposition of Richard S. Nelson to date in conformity with order Herlands, J., 2-11-58—Noonan, J.
Mar. 18—58	Filed stip. & order adjourning deposition of Ray Carter to date in conformity with order Herlands, J., 2-11-58—Noonan, J.
Mar. 18—58	Filed stip. & order adjourning deposition of James E. Zoes to date in conformity with order Herlands, J., 2-11-58—Noonan, J.
Mar. 29—58	Filed stip. & order adjng deposition of R. S. Nelson to date as indicated—Noonan, J.
Apr. 7—58	Filed stip. & order adjourning deposition program set forth in order of 2-13-58 to begin 9-15-58—Bryan, J.
May 16—58	Filed affdvt & notice of motion by pltffs' to revive action, etc.—ret. 5-20-58.
Sept. 2—58	Filed affdvt & notice of motion—Relieve pltff of stip. re: deposition—ret. 9-8-58.
Sept. 8—58	Filed stip. and order of pltff's motion dated 8-28-58 is withdrawn. Edelstein, J.

DATE	FILINGS—PROCEEDINGS
Sep. 8—58	Memo endorsed on motion filed 9-2-58—Withdrawn—So ordered—Edelstein, J.
Sept. 16—58	Filed stip. & order adjourning deposition program set forth in order of 2-13-58 to begin 9-16-58. Weinfeld, J.
Nov. 6—58	Filed opposing affdvt to application to extend pltff's time.
[fol. F]	
Nov. 6—58	Filed affdvt of D. H. Buchanan, Jr., M.D.
Nov. 6—58	Filed Affdvt & Order to show cause to extend time, etc. Ret. 11-6-58. (added in court). Memo endorsed on reverse dated 11-6-58. Pltf is directed to appear for exam as direction on or before 11-12-58 at time & place to be agreed on. So ordered. Kaufman, J.
Nov. 10—58	Filed copy of order of 11-6-58 w/notice of entry.
Jan. 14—59	Filed stip. & order adjourning deposition to 2-24-59—McGohey, J.
Feb. 4—59	Filed stip. & order substituting atty for deft. Gulf Oil Corp.—Clerk.
Mar. 4—59	Filed stip. & order adjourning depositions to begin 4-6-59—Edelstein, J.
Apr. 6—59	Filed stip. & order adjourning depositions to 5-6-59—Palmieri, J.
May 1—59	Filed order referring action to Judge Herlands for all purposes—Ryan, Ch.J. Mailed notice of entry 5-4-59.

DATE	FILINGS—PROCEEDINGS
May 6—59	Filed letter from Kissam & Halpin as co-counsel for Texas Co.
May 5—59	Filed stip. & order deposition program to begin 5-20-59—Levet, J.
May 7—59	Filed affdvt & notice of motion—dismiss claim as to Gulf Oil Corp.—ret. 5-12-59.
May 12—59	Filed Notice of change of firm name—attys for Socony Mobil Oil.
May 12—59	Memo endorsed on motion filed 5-7-59—Referred to Judge Herlands—Levet, J. Consent order dismissing claim as to deft Gulf Oil Corp.—Herlands, J. attached.
May 27—59	Filed stip. & order re: examin. of pltff. adjourned to 9-9-59. Edelstein, J.
June 2—59	Filed transcript of record of proceedings of 5-12-59.
July 17—59	Filed stip. & order adjourning examin. of pltff. to 9-21-59.—Dawson, J.
Sept. 21—59	Filed stip. & order adjourning examin. of pltff. to 10-26-59. Sugarman, J.
Dec. 8—59	Filed stip. & order directing continuance of deposition program to 1/11/60—Sugarman, J.
Dec. 4—59	Filed stip. & order adjourning taking of deposition of Richard N. Nelson to 1/11/60—Herlands, J.
Jan. 13—60	Filed stip. & order continuing deposition program set forth in order of 12/13/58 scheduled to continue with deposition of Richard S. Nelson to 1/18/60—McGohey, J.

DATE	FILINGS—PROCEEDINGS
Apr. 15—60	Filed notice of appearance of Sullivan & Cromwell as attorneys for Standard Oil Company (New Jersey)
Apr. 20—60	Before Herlands, J. Pre-trial conference held—Motion for summary judgment adjourned to May 9, 1960 at 10:30 A.M. in Room 706
[fol. G]	
Apr. 22—60	Filed consent & order substituting Amzy B. Steed in place of Edmund Burke, Jr. as attorney for deft. Texaco Inc. (sued as the Texas Co.)
June 27—60	Filed transcript of record of proceedings of April 20, 1960.—& May 9, 1960
Sept. 12—60	Filed stip adjourning taking of deposition by deft Cities Service Co from 9-13-60 to 10-11-60.
Dec. 9—60	Filed consent stip. & order that deposition of James A. Bentley shall continue 1-30-61. —Dimock, J.
Jan. 18—61	Filed stip. & order adjourning deposition program until 4-17-61.—Edelstein, J.
Mar. 30—61	Filed memorandum Opinion #26,787—Motion of deft. Cities Service Co. for Summary judgment is adjourned pending completion of such pre-trial proceedings as may hereafter be appropriately conducted by pltff. The court will confer with counsel with respect to the settlement of an order in accordance with the foregoing views.—Herlands, J.—Mailed notices
Mar. 30—61	Filed affdvt. & notice of motion to fix hearing—ret. before Herlands, J. 4-25-61.

DATE	FILINGS—PROCEEDINGS
Mar. 30—61	Filed affdvt. of Samuel M. Lane in opposition to motion for summary judgment.
Mar. 30—61	Filed supplemental affdvt. of George H. Hill, Jr. on behalf of Cities Service Co.
Mar. 30—61	Filed affdvt. in opposition to motion for summary judgment—(Gerald B. Waldron)
Mar. 30—61	Filed stenographer's minutes of hearing of 4-20-60.
Apr. 14—61	Filed consent stip. re: deposition of James A. Bentley shall begin 6-19-61.
May 4—61	Filed order adjourning motion dated 4-8-60 pending completion of an examin. of deft. Cities Service as indicated—Herlands, J. —mailed notice
Oct. 24—61	Filed consent stip. & order of substitution of attorneys for deft. Texas Co.—Clerk.
Oct. 27—61	Filed deft. (Texas Co) notice of entry of stip. & consent substituting attys. true copy attached.
Nov. 3—61	Filed stip. & order re: continuation with the deposition of James A. Bentley on 11-9-61. —Herlands, J.
Dec. 13—61	Filed stip. & order re: continuation with the deposition of James A. Bentley on 12-18-61 & 12-19-61, etc.—Palmieri, J.
Feb. 20—62	Filed stip & order re: continue with the deposition of James E. Zoes on 2-26-62— Herlands, J.
Apr. 16—62	Filed stip & order modifing order of 2-13-62 —re: deposition as indicated. Herlands, J.

DATE	FILINGS—PROCEEDINGS
Apr. 19—62	Filed Pltff's affdvt & notice of motion to modify stay of discovery proceedings ret. 4-30-62 Before Herlands, J. At 10:30 A.M.
Apr. 20—62	Filed deft. (Socony Mobil Oil Co) notice to take deposition of Addison Brown, a witness.
[fol. H]	
May 1—62	Filed stip that pltff's motion scheduled for 4-30-62 is adjourned until 5-7-62 at 10:30 A.M. or at such other time and place as the Court may fix for the said hearing.
May 18—62	Filed affdvt of Amzy B Steed
May 18—62	Filed affdvt of James O. Sullivan
May 18—62	Filed order, that James O Sullivan, is permitted to argue or try this cause in whole or in part as counsel Or advocate for said deft Texaco Inc. (sued herein as the Texas Co.). Herlands, J. m.n.
May 29—62	Filed notice that James O Sullivan is authorized to sign papers, and to receive or accept the service of papers, on behalf of said deft Texaco Inc.
Jun. 1—62	Filed stip & order, pltff to submit proposed amended complaint before 6-15-62; before 6-30-62 the defts will indicate to the pltff whether or not they intend to oppose a motion to amend the original complaint as proposed etc.; 7-31-62 pltff shall move to amend the complaint, shall make such motion Ret.; 9-24-62 etc; any papers in opposition to such motion shall be served no less than fourteen days before the return date. pltff's reply papers shall be served no less than four days before the return

DATE	FILINGS—PROCEEDINGS
	day of said motion; defts except cities service Co shall have 30 days after entry of an order on pltff's motion to amend with respect to the complaint or amended complaint; the time of deft Cities Service to answer with respect to the complaint or amended complaint is extended 30 days following the determination by the Court. of deft Cities Service motion for summary Judgment, or until the date set forth in this stip for the answers or motion of all other defts. whichever date shall be later. —Herlands, J.
July 6—62	Filed stip. & order adjourning examin. of Cities Service to 9-10-62—Palmieri, J.
Sept. 7—62	Filed stip. and order adjourning pltffs. exam. of Cities Service to 10/10/62 Cooper, J.
Oct. 16—62	Filed stip. & order that memorandum of Mr. W. Alton Jones dated 2-19-54—information contained therein shall not be disclosed to any person other than to the Court—etc.—Herlands, J.
Nov. 8—62	Filed one envelope containing—1 letter to Herlands, J. two pages, 3 page letter to Hon. Dean Rust, Deposition of Cities Service, and Note to Parkhurst—signed James B Grant—to be *impounded.* in Rm. 602.
Nov. 13, 62	Filed transcript of record of proceedings for 11/7/62.
Nov. 13, 62	Filed order (unsigned) Documents relating to Iranian Oil Consortium to be held undisclosed to any person other than parties indicated or to be sealed. Scope of examination of G. H. Hill to be limited, etc.

DATE	FILINGS—PROCEEDINGS
Nov. 13, 62	Filed order (unsigned) (counter proposed)
Nov. 13, 62	Filed affdvt. of Edward N. Costikyan.
[fol. I]	
Nov. 7, 62	Before Herlands, J., Hearing held.
Nov. 13, 62	Hearing held, Impounded envelope of 11/8/62 now in possession of the Clerk.
Nov. 21—62	Filed pltff's affdvt & notice of motion to produce. ret 12-3-62—before Herlands J
Nov. 21—62	Filed pltff's summary of Facts in support of application for Further Document Production by Cities Service.
Dec. 4, 62	Filed affdvt. in opposition to pltffs. motion for discovery, etc. of Edw. N. Costikyan.
Dec. 4—62	Filed memorandum of defts Socony, Socal, Jersey and Texaco in connection with pending discovery proceedings.
Dec. 5—62	Filed memo endorsed on motion filed 11-21-62—Motion denied after argument. See official minutes of 12-5-62. So ordered—Herlands, J.—mailed notice 12-6-62
Dec. 13—62	Filed order—subject to the provisions of paragraphs 2 through 5 below, no person shall disclose documents or testimony relating to the Iranian Oil Consortium produced or given by or on behalf of deft. Cities Service to any person other than the parties, etc.—examin. of deft. Cities Service by George H. Hill, Jr. shall be resumed on 12-17-62 and said examin. shall be conducted in accordance with the order dated 5-3-61 except as said order is modified by the present order of this Court—Herlands, J.—(dated 12-13-62)—mailed notices

DATE	PROCEEDINGS
Dec. 19—62	Filed stip. & order, that a discontinuance be entered within (30) days of the date hereof and that a compromise order of this Court or any other Court of Competent Jurisdiction be filed therewith.—Tyler, J.
Jan. 15—63	Filed transcript of record of proceedings of 12-5-62
Jan. 28—63	Filed transcript of record of proceedings of 11-7-62 & 11-13-62
Mar. 6—63	Filed transcript of record of proceedings of 2-8-63.
Apr. 22—63	Filed memorandum decision—The court sustains all of the objections interposed in behalf of cities Service Co., upon taking of the deposition of George H. Hill, Jr. on Feb. 27, 1963—So ordered.—Herlands, J. m/n
May 8—63	Filed Stip and order substituting attys for deft Socony Mobile Oil Co Inc. Herlands, J.
May 9—63	Filed affdvt and notice of motion for discovery, returnable before Judge Herlands on 5-20-63
May 23—63	Filed affdvt opposing pltf's motion for further discovery etc
May 27—63	Motion held (Hearing) All pending motions and applications—Reserved.—Herlands—J.
June 25—63	Filed transcript of record of proceedings of May 27 1963
July 12—63	Filed Amended COMPLAINT

DATE	PROCEEDINGS
July 19—63	Filed Stip. and order extending time of defts to answer to amended complaint to 10-15-63 MacMahon, J.
July 30—63	Filed Stip. and Order that if pending motion for summary judgment is denied—deft Cities Service shall have 30 days to answer etc. Cooper, J.
Aug. 20—63	Filed pltf's memorandum of facts opposing Cities Service motion for summary judgment
Sept. 18—63	Filed deft Cities Service reply memorandum
Oct. 14—63	Filed stip and order extending time of defts to answer etc. to 11-1-63 Cooper, J.
Nov. 1—63	Filed DOCUMENTS Vol. 1—Official States & Communications
Nov. 1—63	Filed DOCUMENTS VOL. II—Exhibits 1 to 145
Nov. 1—63	Filed DOCUMENTS Vol. III—Exhibits 145 to 1207
Nov. 1—63	Filed Memorandum of Points & Authorities supporting defts' motion to dismiss etc.
Nov. 1—63	Filed defts British Petroleum Co. Ltd. et al. motion for pre-trial order etc.
Nov. 1—63	Filed deft British Petroleum Co. Ltd's notice re motions
Nov. 1—63	Filed defts' British Petroleum Co's motion to dismiss etc.
Nov. 1—63	Filed defts' memorandum of law supporting motion for pre-trial order etc.
Nov. 7—63	Filed Defts British Petroleum Co & Cities Service Co's affdvt & Notice of Motion to compel signature of deposition of James A Bentley

DATE	PROCEEDINGS
Nov. 7—63	Filed deft's supporting memorandum
Dec. 5—63	Filed transcript of proceedings of Nov. 8 1963
Jan. 9—64	Filed notice of change of firm name for deft. Socony Mobil Oil Co. Inc.
[fol. J]	
Mar. 16—64	Filed pltf's statement under Rule 9(g) (Memorandum of points and authorities in opposition to defts' motion to dismiss etc.
Mar. 16—64	Filed pltf's affdvt of service (by mail) of above memorandum
Apr. 16—64	Filed deft's reply memorandum in support of motion to dismiss etc.
Apr. 16—64	Filed Document Boon—Vol. IV—Apr. 16 1964 Supplement (re deft's motion to dismiss etc)
Apr. 16—64	Filed "References in Plaintiff's Brief—pages 13-17) (re deft's motion to dismiss, etc.)
May 11—64	Before Herlands, J.—Argument of motions held & concluded—Decision Reserved.
May 22—64	Filed OPINION #29990. The responsibility rests upon pltff to set forth in an affdvt. any and all specific facts and evidentiary data constituting the concrete particulars evidencing its "business or property" and the direct and primary injury sustained by said business or property as a result of the alleged acts of deft. This memorandum shall constitute an order. Herlands, J.
June 8—64	Filed a Letter dtd. 6-5-64 to the Clerk of the Court—Re: counsel for deft. (Texaco)
June 23—64	Filed Opinion #30096—The motion of Cities Service for summary judgment will

DATE	PROCEEDINGS
	be adjourned pending the completion of such discovery proceedings—The Court will confer with counsel on 6-30-64—10:30 a.m. for the purposes indicated—Herlands, J.
July 1—64	Filed memorandum of Judge Herlands indicating correction on opinion #30096 filed 6-23-64—"defendant" on the first to second lines of the 3rd paragraph on page 35 should read "person"—Herlands, J.
July 10—64	Filed order—Motion for summary judgment is adjourned pending completion of the exam. of deft. Cities Service Co by pltff. —Cross motion for discovery is granted as indicated etc—Deft. Cities Serv. Co produce to pltff. ten days in advance of exam. copies of all documents which relate to the subject upon which deft is to be exam.—within 30 days following the conclusion of said exam. pltff. & deft. Cities Serv. may submit to the Court any of such documents etc for final consideration of the pending motion—Herlands, J. m/n
Aug. 6—64	Filed transcript of record of proceedings of May 11, 1964.
Aug. 7—64	Filed stip & order—Pltff. to serve opposition papers to motion by 10-9-64—Defts. to serve replies by 11-2-64—Oral argument to be held before Judge Herlands at 10:00 a.m. on 11-9-64—Herlands, J.
Sep. 16—64	Filed pltff's notice of motion pursuant to Rule 56(f) for production of documents & oral depositions. Ret. before Herlands, J. —Time & place to be fixed by Court.

DATE	PROCEEDINGS
Sep. 16—64	Filed affdvt of Samuel M. Lane in opposition to Cities Service's motion for summary judgment and in support of pltff's motion for additional discovery.
Sep. 16—64	Filed deft's (Cities Serv. Co.) submission in support of motion for summary judgt.
Sep. 16—64	Filed one folder containing depositions.
Sep. 16—64	Filed deposition of Burl S. Watson. m/n
Sep. 16—64	Filed deposition of Alfred Putnam Frame. m/n
Sep. 16—64	Filed deposition of Edgar Heston. m/n
Sep. 16—64	Filed pltff's exhibits marked for identification in depositions of Watson, Frame and Heston.
Sep. 30—64	Filed OPINION #30430. Fixing schedule for further discovery and for defts. Cities Service Co. motion for summary judgment. Papers on summary judgment to be filed before 11/2/64. So ordered. Herlands, J. mn 10/1/64.
Oct. 13—64	Filed pltff's affdvt in opposition to deft's motion to strike amended complaint.
Oct. 13—64	Filed pltffs' memorandum of law in opposition to defts' motion to strike etc.
Oct. 16—64	Filed memorandum of defts' (other than Cities Service Co) in opposition to pltff's motion for discovery.
Oct. 16—64	Filed statement of Milton Pollack.
Oct. 19—64	Filed affdvt of Simon H. Rifkind in support of motion for summary judgment & in opposition to pltff's cross-motion for additional discovery.

DATE	PROCEEDINGS
Nov. 4—64	Filed affdvt of Simon H. Rifkind Re: motion for summary judgmt.
Nov. 5—64	Filed stip & order Re: motion pursuant to Rules 12(f) & 16 FRCP be disposed of as indicated—Herlands, J.
[fol. K]	
Nov. 4—64	Filed pltffs' comments on the deposition of Messrs. Frame, Watson and Heston and the documents produced thus far by Cities.
Nov. 4—64	Filed pltffs' memorandum of Law in support of motion for further discovery.
Nov. 4—64	Filed affdvt of Alice Scott of service of the memorandum in support of pltffs' motion.
Nov. 6—64	Filed stip & order extending deft's (British Petroleum Co Ltd) time to answer amended complaint to 10 days after the entry of the Court's order on deft's motion to strike etc—Herlands, J.
Nov. 5—64	Filed pltff's reply to Cities Service's submission in support of its motion.
Nov. 10—64	Filed order—All proceedings stayed until further order except a motion in accordance with Rule 25(a) FRCP.—Herlands, J. m/n
Nov. 24—64	Filed letter dated 11-16-64 from Paul B. Wells Re: communications to deft. Texaco Inc.
Jan. 26—65	Filed petitioner's (Patricia Waldron) affdvt & notice of motion to substitute executrix —Ret. before Herlands, J. at a time & place to be determined by Court.

DATE	PROCEEDINGS
Jan. 26—65	Filed petitioner's memorandum in support of motion for substitution.
Jan. 29—65	Filed deft's (Cities Service Co) affdvt & notice of motion for summary judgment—Ret. before Herlands, J. time to be fixed.
Jan. 29—65	Filed memorandum in support of motion for summary judgment dismissing complaint against deft. Cities Service Co.
Feb. 3—65	Filed pltff's notice of cross-motion for discovery—Ret. before Herlands, J. time to be fixed.
Feb. 5—65	Filed memorandum of defts. on motion for substitution
Feb. 15—65	Filed Opinion #30869 deferring determination of the issue relating to survivorship of claim for treble damages and atty's fees. Herlands, J.
Mar. 11—65	Filed stip & order—The signing of the depositions indicated taken by pltff. is waived, and the depositions may be used as fully as though signed—Herlands, J.
Sep. 8—65	Filed OPINION #31,600—Deft's (Cities motion for summary judgment dismissing the complaint as to it is hereby granted. Pltff's motion for further discovery under Rule 56(f) is hereby denied. So Ordered—Herlands, J. (Mailed notices on 9-9-65)
Sep. 10—65	Filed transcript of record of proceedings of Feb. 9, 1965.
Sep. 13—65	Filed notice of change of address of pltff's atty.
Sep. 13—65	Filed JUDGMENT (on motion for summary judgment) Pltff's complaint against

DATE	PROCEEDINGS
	the deft. Cities Service Co is dismissed on the merits. Deft. recover from pltff. Patricia Waldron its costs of this action—Herlands, J.—Judgment Entered—Clerk (Entered and mailed notices on 9-15-65)
Sep. 15—65	Filed notice of entry & copy of Judgment entered against deft. Cities Service Co.
Oct. 11—65	Filed Bond in sum of $250. Fidelity & Deposit Co. of Md. undertaking appeal costs.
Oct. 11—65	Filed pltff's Notice of Appeal—Mailed notices to Paul, Weiss, Rifkind, Wharton & Garrison, Milton Pollack, Nixon Mudge Rose Guthrie & Allexander, Donovan, Leisure, Newton & Irvine, Cahill, Gordon Reindel & Ohl, Sullivan & Cromwell and James O. Sullivan.
Oct. 22—65	Filed pltff's notice of objections to proposed Bill of Costs.
Oct. 22—65	Filed Bill of Costs taxed in the sum of $8,630.74 and added as Judgment #67,559.
Nov. 5—65	Filed Supersedeas bond undertaking for costs on appeal.
Nov. 22—65	Filed deposition of Gerald B. Waldron (35 vols. pages 1 to 3668)
Nov. 22—65	Filed deposition of Gerald B. Waldron (59 vols. pages 3668 to 10190a)
Nov. 22—65	Filed deposition of Richard S. Nelson (32 vols. pages 1 to 2899)
Nov. 22—65	Filed hearing on motion (pages 1 to 20) May 3, 1961
Nov. 22—65	Filed deposition of James A. Bentley (9 vols. pages 1 to 3873a)

DATE	FILINGS—PROCEEDINGS
Nov. 22—65	Filed deposition of James E. Zoes (5 vols. pages 1 to 830a)
[fol. L]	
Nov. 22—65	Filed 1 volume of continued deposition of Gerald B. Waldron (pages 10,191 to 10259a)
Nov. 22—65	Filed deposition of Addison Brown (pages 1 to 120)
Nov. 22—65	Filed deposition of George H. Hill, Jr. (pages 1 to 650a)
Nov. 22—65	Filed deposition of Alfred Putnam Frame —(pages 1 to 178 and 1 to 293)
Nov. 22—65	Filed deposition of Burl S. Watson (pages 1 to 598)
Nov. 22—65	Filed deposition of J. Edgar Heston (pages 1 to 212)
Nov. 19—65	Filed stip & order that a printed copy of depositions of Gerald Waldron, Richard S. Nelson, James A. Bentley, James E. Zoes & Addison Brown pages 1 to 9836 shall be filed in this action non pro tunc & shall be included as part of original papers in the record on appeal. Herlands, J.
Nov. 22—65	Filed stipulation as to what the record on appeal shall constitute.

[fol. O]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Case Number Civ. 110-223

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased, Plaintiff-Appellant,

—against—

CITIES SERVICE Co., Defendant-Appellee.

TRUE EXTRACT OF DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
June 28—56	Filed Affidavit and Show Cause Order—extend time of defendant Socony Mobil Oil to answer to 10-30-56—Ret. 7-3-56
June 28—56	Filed Affidavit and Show Cause Order—extend time of defendants Cities Service, Standard Oil Co. of California and Standard Oil Co. (NJ) to answer to 10-30-56—Ret. 7-3-56
Nov. 5—64	Filed plaintiff's reply to Cities Service's submission in support of its motion.
Mar. 29—66	Filed report on Iranian Petroleum situation. Exhibit CS-119
Mar. 29—66	Filed one envelope containing plaintiff's Exhibit CS-40
Mar. 29—66	Filed stip.—exhibits, and affidavit indicated are hereby designated as comprising a supplement to the record on appeal.

[fol. P]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Case Number 110-223

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased, Plaintiff-Appellant,

—against—

CITIES SERVICE Co., Defendant-Appellee.

TRUE EXTRACT OF DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
Dec. 13—62	Filed order—subject to the provisions of paragraphs 2 through 5 below, no person shall disclose documents or testimony relating to the Iranian Oil Consortium produced or given by or on behalf of deft. Cities Service to any person other than the parties, etc.—exam. of deft. Cities Service by George H. Hill, Jr. shall be resumed on 12-17-62 and said examin. shall be conducted in accordance with the order dated 5-3-61 except as said order is modified by the present order of this Court—Herlands, J.—(dated 12-13-62)—mailed notices.

[File endorsement omitted]

[fol. 11475]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO. LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO. INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL COMPANY (NEW JERSEY), THE TEXAS COMPANY, Defendants.

Transcript of Hearing—New York, April 20, 1960

10.30 o'clock a.m.

Before: Hon. William B. Herlands, District Judge.

[fol. 11476] APPEARANCES:

Casey, Lane & Mittendorf, Esqs., Attorneys for Plaintiff; Samuel M. Lane, Esq., and Robert P. Beshar, Esq., of Counsel.

Sullivan & Cromwell, Esqs., Attorneys for Standard Oil Co. (New Jersey); Roy H. Steyer, Esq., and Hamilton F. Potter, Jr. Esq., of Counsel.

Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., Attorneys for Cities Service Co.; Simon H. Rifkind, Esq., and Edward N. Costikyan, Esq., of Counsel.

Donovan, Leisure, Newton & Irvine, Esqs., Attorneys for Socony Mobil Oil Co.; William Rogers, Esq., of Counsel,

—and—

Dorr, Hand, Whittaker & Watson, Esqs., Attorneys for Socony Mobil Oil Co.; Goldthwaite H. Dorr, Esq., and Robert Thornton, Esq., of Counsel.

Cahill, Gordon, Reindel & Ohl, Esqs., Attorneys for Standard Oil Co. of California; William N. Sayre, Esq., of Counsel.

Kissam & Halpin, Esqs., Attorneys for The Texas Company; Leo T. Kissam, Esq., P. Richard Mercurio, Esq., and Amzy B. Steed, Esq., of Counsel.

Milton Pollack, Esq., Attorney for British Petroleum Co. Ltd.

[fol. 11477]

DISCUSSION RE FIXING DATE TO HEAR ARGUMENT ON MOTION FOR SUMMARY JUDGMENT

Mr. Rifkind: May it please your Honor, the nature of this morning's application is rather simple and really concerns only two parties: the plaintiff in the case of Waldron against British Petroleum, represented by Mr. Lane and Mr. Beshar, and ourselves appearing for Cities Service. I must confess to you that I am vastly flattered that on this simple application such a distinguished bar should be assembled to hear me make this argument—the only object of my argument being that I would like to fix a date, if your Honor finds it convenient to do so, on which you can hear argument on this motion for summary judgment.

I may say to your Honor that the motion will take more than the usual time to argue. I would not be surprised if the better part of a day were not devoted to its exposition.

On the other hand, if it should be successful, it will save a vast amount of time and a vast amount of money.

Be that as it may, the reason for this unusual mode of application is that many counsel representing other defen-

dants have expressed a desire to be present at least during [fol. 11478] the argument, for whatever bearing it may have upon their cases, and therefore have asked that some consideration be given as well to their convenience in the selection of a date. Being a reasonable fellow, as I hope your Honor will take judicial notice of, I am willing to accommodate my own convenience to them to some degree, but essentially I think it is a matter of your Honor's calendar to set a date most convenient to all.

So far as I am concerned, if your Honor is interested in our own wishes in the matter, any time during the first week of May would be satisfactory. The reason that I say the first week of May is that out of deference to the fact that Mr. Dean, who represents Standard Oil of New Jersey in this case, is out of the country and won't be back until the latter part of the month, and he has expressed a desire to be present. I am therefore saying the first week of May.

I hope your Honor won't make it beyond the first week of May because after that I have an obligation to perform which is of a confidential character, but I would be glad to disclose it to your Honor if your Honor is interested. If we do not have it during the first week of May it would [fol. 11479] involve a very long delay which I really think would be unwarranted.

Mr. Lane: May I be heard just briefly, your Honor?

The Court: Yes, Mr. Lane.

Mr. Lane: It seems to me that as you contemplate this motion which is brought under Rule 56 for summary judgment in an antitrust case, in which the defendant has not answered yet and in which the plaintiff has, from the very outset, been stayed from any discovery, inspection or deposition, it might devolve into really two arguments rather than the one which Judge Rifkind indicates; in other words, I think he in his own mind is considering that on this adjourned date which your Honor fixes we will be arguing the motion on the merits. I suggest that in the particular circumstances of this case the plaintiff would first proceed

under Rule 56(f) by demonstrating to the court that the facts by which this conspiracy may be proved would be in the possession of the defendants, not only Cities Service but the other defendants, and that we would not be prepared to meet this on the merits until we have had an opportunity for discovery and inspection and the taking of [fol. 11480] depositions.

If we confine ourselves to that on the adjourned date I think the argument would be fairly brief because the demonstration for our need for that type of relief would be pretty plain. If your Honor were then to decide that we should in fact go after it on the merits, that would require, as Judge Rifkind has indicated, I think, a very long argument, and it would also require a great deal of time to prepare to meet this motion, which I assume Judge Rifkind's firm has prepared at their leisure. I do not think I could be prepared to argue this on the merits during the first week of May. I could argue it on the other branch of this at any time at all.

Mr. Rifkind: May it please your Honor, my good friend Mr. Lane has had my motion since the 8th of April, and while I am not unaware of the fact that on motions for summary judgment it is not at all uncommon for the party resisting the motion to suggest that other avenues of investigation might give him something which would enable him to meet the issues, I have never heard that such mo- [fol. 11481] tions are broken into halves, and that the first part is argued separately as a kind of preliminary or interlocutory application. It is one of the elements taken into consideration and I do not expect that your Honor will grant the motion for summary judgment unless I satisfy you that the statutory standard has been met, namely, that there is no issue of fact and that as a matter of law we are entitled to judgment.

If I cannot meet that issue for any reason, my motion will fail, and if my motion fails it is not appealable and that will be the end of this motion.

On the other hand, I think we will be able to demonstrate it. I think we have made our motion on relatively narrow ground. I think that Mr. Lane knows fully the grounds upon which we have made our motion, and if it should serve any purpose, if your Honor would want to direct me to serve a brief in advance of the argument date to further narrow the basis of my motion, I will be glad to comply with such a direction. That might tend to facilitate Mr. Lane's preparation, and within a very short time I would be prepared to do so.

Mr. Lane: If I might just say this before your Honor speaks on that, contemporaneously with the service of the [fol. 11482] motion papers I was informed that I need not be prepared on the 25th, which is the return date—

Mr. Rifkind: That's correct.

Mr. Lane: —because an application would be made for an adjournment, looking upon this on the merits. Being myself engaged in other matters, I therefore have not dropped them to work on this, thinking we would have a substantial adjournment if we went into the merits. I do not think we need to take the court's time on the merits, and I think we can demonstrate that, and if that is so, it seems to me your Honor, controlling the mechanics of this case at this point, would not want to have us go into the merits to the length that Judge Rifkind has indicated.

The Court: Do other counsel in the matter have any suggestions?

Mr. Steyer: If your Honor please, my name is Roy Steyer of Sullivan & Cromwell, counsel for Standard Oil of New Jersey.

As Judge Rifkind has indicated, the senior trial counsel for New Jersey, Arthur Dean, is presently out of the country on a mission. The Government does not expect him [fol. 11483] back until the end of the month.

In view of what has been said today, it is quite clear to me that the other defendants have more than an academic interest in the motion that Judge Rifkind is preparing.

If it suits your Honor's schedule to meet on this motion in the first week in May, that will be a fairly short time for Mr. Dean to get back and adjust his affairs and get prepared; but if that is your Honor's schedule we can meet that.

Mr. Pollack: If your Honor please, I represent British Petroleum Company. Merely as a matter of personal convenience, if the first week of May is accepted, I hope it can be on three of the five days during that week, omitting the fourth and the sixth, if there is no inconvenience to the court and other counsel, because I have to be in the Appellate Division First Department on each of those days.

The Court: Mr. Pollack, I think in the interest of expedition and so that we may all collaborate in fixing a date that will be least inconvenient to everybody, I might disclose to counsel my own schedule so that the ingenuity of counsel may be available to the court. That will give [fol. 11484] us a frame of reference.

On April 26th, which is a Tuesday—this is off the record, Mr. Reporter.

(Discussion off the record.)

The Court: Very well. The record will now disclose, after a conference with counsel, that the motion made by Cities Service Company is set down for argument on May 9th at 10.30.

Mr. Rifkind: Thank you, your Honor.

The Court: The movant will serve and file a brief in support of the motion as soon as possible, serving the plaintiff and the other defense counsel, and Mr. Lane in behalf of the plaintiff will serve and file an answering brief as soon thereafter as can be done, with all convenient speed.

Mr. Lane: Yes, sir.

The Court: All right, gentlemen.

Mr. Rifkind: Thank you very much.

Mr. Lane: Off the record.

(Discussion off the record.)

(Adjourned to May 9, 1960 at 10.30 a.m.)

[fol. 11485]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO. LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO. INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL COMPANY (NEW JERSEY), THE TEXAS COMPANY, Defendants.

Transcript of Hearing—New York, May 9, 1960

10.30 o'clock a.m.

Before: Hon. William B. Herlands, District Judge.

[fol. 11486] APPEARANCES:

Casey, Lane & Mittendorf, Esqs., Attorneys for Plaintiff; Samuel M. Lane, Esq., and Robert P. Beshar, Esq., of Counsel.

Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., Attorneys for Cities Service Co.; Simon H. Rifkind, Esq., Edward N. Costikyan, Esq., and Arthur B. Frommer, Esq., of Counsel.

Sullivan & Cromwell, Esqs., Attorneys for Standard Oil Co. (New Jersey); Arthur H. Dean, Esq., Roy H. Steyer, Esq., and Hamilton F. Potter, Jr., Esq., of Counsel.

Milton Pollack, Esq., Attorney for British Petroleum Co., Ltd.

Donovan, Leisure, Newton & Irvine, Esqs., Attorneys for Socony Mobil Oil Co.; James R. Withrow, Jr., Esq., William Rogers, Esq., of Counsel

and

Dorr, Hand, Whittaker & Watson, Esqs., Attorneys for Socony Mobil Oil Co.; Goldwaite H. Dorr, Esq., and Robert Thornton, Esq., of Counsel.

Cahill, Gordon, Reindel & Ohl, Esqs.; Attorneys for Standard Oil Co. of California; John F. Sonnet, Esq., and William M. Sayre, Esq., of Counsel.

Kissam & Halpin, Esqs., Attorneys for The Texas Company; Leo T. Kissam, Esq., Seth M. Dabney, III, Esq., P. Richard Mercurio, Esq., and Amzy B. Steed, Esq., of Counsel.

[fol. 11487] Mr. Rifkind: Defendant is ready.

Mr. Lane: Plaintiffs are ready, your Honor.

The Court: You may proceed, Judge Rifkind.

ARGUMENT BY MR. RIFKIND

Mr. Rifkind: Thank you, your Honor.

I believe that some time ago, your Honor received from us a brief in support of our motion for a summary judgment, and last Friday afternoon we received a brief from the plaintiff.

We have examined the plaintiff's brief, but it may be that we shall want to write some remarks in response to it; indeed, I have written some, but I am not sure that it is ready for submission.

With that preliminary, your Honor, I would like to address myself to this motion, and in doing so, I should like to depart somewhat from the normal procedure. I would first like to take a minute to take a look at the procedural context in which we are involved.

We have made a motion for summary judgment under Rule 56. I can still remember when the use of summary

judgment was regarded as a fairly radical notion in civil procedures, and I can remember the time when one of my then senior partners traveled through the neighboring counties to encourage the bar in the use of this new nos- [fol. 11488] trum. But of course, since then, summary judgment has had a very considerable growth and development, and it is interesting to observe, your Honor, that not only has the use of summary judgments grown in extension, that is, more and more jurisdictions have adopted this tool and made it part of their arsenal of procedural devices, the most conspicuous addition to the ranks although, of course, being the Federal system, but also it has grown in the states and in jurisdictions which had adopted it in intention, progressively.

The kinds of causes of action which were subject to summary judgment, the occasions when it could be used have all been expanded in the jurisdictions which have employed it, and it has been given more and more flexibility by such devices as partial summary judgment and other methods, because its utility, its serviceability as a saver of time, as a conserver of judicial effort, as a screen to throw out of the crowded calendars of the courts the spurious issues, have come to be recognized.

It has a very interesting correlation in the Federal system, particularly to two procedures which have now become firmly established in the Federal procedural ar- [fol. 11489] rangements.

Under the Federal Rules of Civil Procedure, whether we so call it or not, we operate by a system of notice, pleadings. The old common law notion that you have to state a cause of action in your complaint has been pretty well expelled from the Federal system.

Also in the Federal system we have a very liberal set of arrangements for pretrial discovery and examination.

Your Honor can very readily see that in a system of civil procedure which requires very little disclosure upon the complaint and which permits the broadest kind of exploration after the complaint, abuses could mount to the point

where they would become intolerable but for a safety device like a motion for summary judgment, designed to clear away the case once it is demonstrated that there is no genuine issue, no material issues to be tried.

I must say to your Honor that in this Circuit there came a time when summary judgment received a considerable setback. It was in the middle '40s, I believe in 1945 or 1946, when the Court of Appeals of this Circuit, by a divided court in the renowned case of Arnstein v. Porter, certainly [fol. 11490] wrote or appeared to write a summary judgment out of plagiarism suits and indicated that it looked upon the device with a high degree of disfavor, with the result that its application in this Circuit was to some extent diminished for a time after that.

If I may take a little aside, your Honor, I will indicate later as we argue the law that what appears to be the stringent rule of Arnstein v. Porter no longer is the governing rule. But be that as it may, I think it is well to understand the psychology of that very eminent jurist, Jerome Frank, for whom I have tremendous admiration and affection. I think it psychologically interesting to discover what it is that I think induced Judge Frank to write as he did in Arnstein v. Porter.

Judge Frank had written extensively against the use of the jury system. Now, of course, Judge Frank was a scholar of the law and knew that the jury was one of the treasured gems of the American judicial system, one which commanded a great deal of respect by the lay public, indeed, regarded as one of the sancta of our popular notions of good judicial traditions, and yet he leveled one shaft after an- [fol. 11491] other against the jury system in all of his writings, and Judge Frank needed to compensate for this apostasy with respect to one of the sacred concepts of the law by an extraordinary devotion to another sanctum, namely, the so-called day in court.

So, having written juries out, he then came back and said, "But we must have a day in court for every conceivable issue," and Arnstein v. Porter was the result.

[fol. 11492] I think it might interest your Honor to know the consequences to Arnstein of what happened as a result of Arnstein v. Porter. You know, brother Arnstein sued the author of every smash success on Broadway for infringement of copyright. I think at the time Arnstein v. Porter was decided he had already had some five or six lawsuits, after Arnstein v. Porter his activity increased, and with Arnstein v. Porter it was impossible to avoid the vast expense of these highly costly lawsuits from proceeding.

But one of my partners then discovered a remedy for Arnstein v. Porter, and it was a relatively simple one. There haven't been any more Arnstein cases since then. First we got Judge Dimock to stay Arnstein's next lawsuit until he paid up the costs which he had incurred when he lost all of his other lawsuits. He had never won a lawsuit in this courthouse. Bills of costs had remained unpaid and accumulated. And finally we went to Judge Dimock and said that it didn't seem right that this man should just go on annoying his fellow citizens when he hasn't exhibited an ability to discharge his previous applications. That was granted. After that we appointed a receiver of all his claims in order to develop some assets for the satisfaction [fol. 11493] of those judgments. That put the quietus on that chapter of plagiarism history completely and finally.

I am suggesting this rather circuitous route because it points up the dangers of what can happen to a situation where there is the salutary device of interposing a screen between irresponsible litigants and affluent defendants. There must be some screen or else the judicial process is abused. The screen contemplated by the Federal Rules of Civil Procedure is the motion for summary judgment.

Now I might say that even after Arnstein v. Porter many of the judges of this district continued to apply summary judgment as they believed it should be applied, and one of the cases decided shortly after that is one that your Honor cited in Harris v. Fawcett Publications. It is the first case you cite, and the name of it is Millstein v. Hayward. And, although it may involve me in some immodesty to call your

Honor's attention to that decision, I very humbly suggest that it will repay re-reading because it throws light, I think it does, upon the judicial process involved in evaluation of a set of facts to determine whether summary judgment [fol. 11494] should or should not lie. And it might interest you, of course, that that was a plagiarism suit, the very kind of a suit to which Judge Frank addressed himself. Summary judgment was granted, and it has since been cited approvingly on a number of occasions.

Shortly thereafter there was an antitrust suit. Now, that certainly seems like a strange place in which to invoke summary judgment, all these so-called complex notions of the degree of competition, whether the interference was substantial, all of the apparent issues that surround a normal antitrust suit. There the moving party in International Salt was the Government. Summary judgment was granted. Summary judgment was approved by the United States Supreme Court.

Suffice it to say, your Honor, that I have had a check made, and suggested to me by one of my colleagues in this lawsuit, as a matter of fact, which indicates that the Court of Appeals has been affirming the grant of summary judgment and that district judges of this court have been granting summary judgment. I think since 1957 they granted summary judgment in 17 cases out of 48 applications, which shows their fairly high rate of granting it and that the [fol. 11495] Court of Appeals has affirmed, in antitrust cases, summary judgment and that it has not denied justice to any litigant who had what the statute requires, a genuine and material issue.

Let me summarize what I think is the meat of this whole contest between summary judgment and those who are apprehensive that it will deny the litigant a day in court. Here you have, as I see it, a very potent medicine. Maybe we ought to call it in the law a wonder drug. It has to be used exactly as indicated on the label because, if it is used other than as indicated on the label, it may have dangerous side effects. It has to be used with caution but, when used

with caution, when used as directed on the label, when used as appropriate, it is a tremendously desirable and useful device and remedy, and the only concern, the only thing to look for in the diagnosis of the case to determine whether this remedy is suitable or unsuitable is: Is there a genuine issue over a material fact? These are, of course, notions that are common to the law and need not be elaborated again.

Now, with this little prefix with respect to the general procedural context, I want to get to the case. I think it [fol. 11496] might be useful for your Honor to have a word about the historical context in which this case is set because this case, although a trivial footnote to history, nevertheless is a footnote to history.

Back in May of 1951 the Iranian Government, then in the hands of someone we might call, in modern terminology, the Iranian Castro, a gentleman by the name of Dr. Mossadegh, expropriated the oil properties in Iran which were the property of the Anglo-Iranian Oil Company now known as British Petroleum Company.

I need hardly suggest to your Honor, indeed you could take judicial notice, that an act of that daring, of that magnitude, an act having such far-reaching implications would inevitably arouse a vast storm of concern not only among the people who own those properties but among all other corporations that had interests in that part of the world, who apprehended that this example might prove contagious; among all of the Western nations, and particularly on the Continent of Europe who were the customers for the oil, which flowed out of Iran, which was refined in the Abadan refinery and was marketed by Anglo-Iranian; and, from a defense point of view, all of the Western na- [fol. 11497] tions, including the United States, who were quite apprehensive that the fuel necessary to fire the engines of production of the whole Western world were in jeopardy. Inevitably every responsible participant, governmental and private, in the whole complex known as the oil industry began searching for a solution to this problem. Governmental,

private, whatever it may be, a solution had to be discovered so that once again Iranian oil might flow in its accustomed channels.

I shan't go into the vast steps taken in this country to help protect the European customers who had previously been supplied by this source of oil and other things that happened. But now, into this tornado, walked a man by the name of Waldron. I withdrew what I say. He didn't walk in. He rushed in, with the proverbial speed of those who act otherwise than the angels.

Now, who is Mr. Waldron, according to his deposition? He was a food broker located in the City of Denver. His success in his chosen field of business had not been conspicuous down to that time; his earnings were somewhat under the $10,000 mark per annum; his knowledge of oil [fol. 11498] was zero; his contacts with oil people were zero; his capital, zero; and his experience as a businessman in connection with oil can best be described by reading one answer to a question put to him on his deposition. Referring to his contacts and experience in oil:

"Q. You did not come across any of it in connection with any business transaction in which you were engaged other than buying 10 gallons of gas for your car?

"A. That's right."

So there he was, Waldron, like Alice in Wonderland, rushing into this oil situation. Surprised he was when he soon discovered that the faster he ran, like Alice, the less progress he made. He discovers that Anglo-Iranian is threatening to sue anybody who would trade in oil which Anglo-Iranian regarded as stolen property. He discovered that some other people were not eager to trade in a commodity the trade of which might subject them to lawsuit. He might even have discovered some who, as a matter of principle, would not encourage a government that was bent upon expropriation. He discovered that he couldn't find tankers to carry oil from Iran to the United States, a trade which had heretofore never existed so that there were no

[fol. 11499] such tankers in such a trade, the flow of oil from Iran having been to Europe and not to the United States.

He discovers to his amazement and dismay that in the banks in the greater centers of finance downtown, in Lower Manhattan, he is unknown and that, being unknown, they are not quite prepared to make or enter into million-dollar or multi-million-dollar transactions with him.

All of this undoubtedly disturbs Mr. Waldron no end.

Now, I don't know when it happened, but at some stage in this period, probably after this episode came to an end—but I am not sure—Mr. Waldron comes to the conclusion that this vast storm to which I referred, this tornado that was blowing, was all funneled and aimed at Waldron. He was the sole object of this entire enterprise. All this litigation, all these threats of litigation, all this resistance, all this lack of tankers, the lack of finance—everything, the whole thing was addressed to Waldron.

I think it takes a very considerable egocentricity to arrive at such a supposition.

But you see, this was very heady wine that Mr. Waldron [fol. 11500] was drinking, having left Denver, where he had been selling nuts and similar items of food, and suddenly he finds himself flying back and forth to Persia, where he meets governmental officials, State Department officials, oil merchants—this is pretty important stuff in his life. So he develops this notion.

To a degree it reminds me of the story of the small moth who in the first Fourth of July after the war of independence was won, emerged from his chrysalis and looked around and saw bonfires all around, and he said, "My, what a wonderful sight, and all for me", and as he flew around until his wings got singed, he kept believing that those bonfires were all there to warm the heart of this small moth.

As far as I know, there is only one instance in history when a storm was directed at a single individual, and the Scriptures report that the prophet Jonah, when he was on board a ship which was tossed around by the tempest, when he was asked by seamen whether he knew what the cause

of it was, I think he said, "I am the cause of this storm" and asked to be cast into the sea.

But there is a tremendous difference. Jonah, as I remem-
[fol. 11501] ber, was engaged on a divine mission to save the Assyrian civilization. I don't think that he, like Waldron, was out to just make a quick buck. And let there be no doubt about it: Waldron had no interest in finding a solution to the Iranian problem. He was not concerned with America's interest in that situation. All he was interested in was to see whether out of this disturbed situation he could make a quick dollar.

Now, in the midst of this I have got to take Waldron into his first contacts with Cities Service Company, the moving defendant in this case.

This happened more than a year after the nationalization and a considerable time after Mr. Waldron has been busy in his attempts to become the greatest oil merchant of all of the planet earth.

In July of 1952, I believe the 8th of July, 1952, according to his deposition, he has his first meeting with any official of the Cities Service Company. He is introduced to the Cities Service people by an oil broker.

Now, it is an interesting commentary upon the democracy of American business that this unknown, this novice, this interloper in the oil business is nevertheless well received [fol. 11502] at Cities Service. He is cordially treated at Cities Service. He is given access to every official whom he desires to see. Nobody boycotts him; nobody excludes him; and his proposals are seriously listened to.

Now, what is he doing? To put it in the simplest terms, he is a drummer, and he is drumming Iranian oil, and that is what he offers to sell to the Cities Service Company.

At that time, Cities Service Company needed oil. At that time Cities Service Company was not getting any oil from the Middle East.

He claims that he has a contract with the Iranian Government for the purchase of many millions of tons of oil. Whether he has such a contract or not is not material on

this motion. There is some very important question about that, but he represents that he has a contract which would enable him to buy oil, to get oil from Iran.

He is told by Cities Service people—and this is all derived from his own deposition; that is all we have here, is his deposition—he is told that Cities Service was not interested in buying any quantities of oil that he has for [fol. 11503] sale under his so-called contract. He is told that Cities Service is interested in finding a solution to the Iranian oil problem and that in such a solution Cities Service would be willing to make a contribution and that if it were necessary, Cities Service would be willing to undertake to manage the Abadan refinery and to reactivate it under appropriate contracts with the Iranian Government and that the officials of Cities Service would be willing to go to Iran to look the situation over to see what can be done.

Waldron and his associates suggest that they can procure an invitation from Mr. Mossadegh, to invite Mr. Jones of Cities Service to go to Iran.

In due time, such an invitation is received. Jones goes to Iran. He inspects the property. He evaluates the situation, and he comes to a conclusion. He comes to the conclusion, which is testified to by Mr. Waldron in his deposition: Mr. Jones tells Mr. Waldron that they have struck a dry hole.

I don't think I need to translate this oil slang for the information of this Court.

Now, for reasons that escape me, Mr. Lane annexes a newspaper story to his answering affidavit. I think Mr. Lane will agree with me that this is the story to which Mr. [fol. 11504] Waldron kept referring during his deposition when I examined him.

Am I not right, Mr. Lane?

Mr. Beshar: No.

Mr. Rifkind: It is not the clipping to which reference was then made?

Mr. Lane: I don't know, Judge.

Mr. Rifkind: In the course of his deposition, Mr. Waldron repeatedly said that he knew something on the basis of a newspaper clipping. He was asked to produce that clipping. I don't believe it was ever produced.

Well, whether it is the same or not, Mr. Lane annexes this clipping. It is a report in the New York Times of an interview given by Mr. Jones while in Teheran, Iran, at the closing days of his stay in Iran.

I will read a couple of paragraphs:

"W. Alton Jones, president of Cities Service Oil Company, an American oil refining and distribution concern, indicated in a press interview today that he might be willing to assist Iran in operating her oil industries again. He also indicated that he might buy oil from Iran, irrespective of whether there was a British-Iranian oil settlement [fol. 11505] and irrespective of whether Britain and the Anglo-Iranian Oil Company would take legal action against his company for handling Iranian oil. He denied, however, having made any agreement or commitment to do anything or having come to any final decision and stated that he discussed the purchase of oil only as a remote possibility."

I solicit your Honor's attention to the rest of this article.

It is an interesting thing, it is true that Jones returned to the United States, and there never was any arrangement or deal made between Cities Service Company and the Iranian Government or the Anglo-Iranian Oil Company, whichever it might be, or with Waldron.

It is also interesting, however, that throughout this examination, this deposition of Mr. Waldron, when he was asked to state each and every conversation he ever had with any official of Cities Service Company, and he did narrate a great many of them, at no time—and I reemphasize that—at no time did Mr. Waldron testify that he asked either Mr. Jones or any other official of Cities Service why there was no deal between Iran and Cities Service Company.

The next chapter which has an important contextual relationship to this motion is the so-called United States liti-
[fol. 11506] gation.

I believe it was in 1953 that the United States filed a complaint against a number of oil companies accusing them of violations of the antitrust laws. The accusation was that they had conspired to restrain interstate and foreign commerce in oil, that they had conspired to increase the domestic price of oil and that they had conspired to monopolize the trade in oil between the United States and foreign countries, and the means are alleged in paragraph 9 of the Waldron complaint.

Now, Cities Service was not a defendant in that case. Cities Service was not named as a co-conspirator in that case. Cities Service was not named, mentioned or identified in that case. Cities Service was not included, directly or indirectly, in the allegations of that complaint.

I would suppose that the United States has at least as good access to information and means of investigation as Mr. Waldron. The United States did not see fit to include Cities Service among those whom it accused of participation in this so-called conspiracy.

Since then, seven years have gone by. I suppose there has
[fol. 11507] been considerable activity in that case, although I haven't participated in it. Not to this day has the United States amended its complaint so as to include Cities Service as a defendant or a co-conspirator in any other capacity in that litigation, and I would suppose that the United States by this time has had access to everything that Mr. Waldron had.

On the coattails of the United States complaint, Waldron filed his complaint, and I will at least credit Waldron with the proposition that with respect to every allegation of the complaint which he copied out of the Government complaint—and I do not mean to say that in any offensive or derogatory sense; it is perfectly all right for him to copy the Government's complaint if that is what he wants to do

—but in each case since he now had additional defendants he interposed the phrase, "except Cities Service", and to make assurance doubly certain, on his deposition he again stated under oath that he had no intention of accusing Cities Service of a participation in the conspiracy which is alleged in the Government's complaint.

Cities Service is mentioned in the complaint in just two [fol. 11508] places and only two places. I don't know whether your Honor has a printed copy of the complaint or a typewritten copy. The pagination is different. But on page 18 of the typewritten version, paragraph 10, letter (i), subdivision 6 of the complaint, he alleges as follows:

> "Prior to 1952, Cities Service had been unable to obtain a source of crude oil in the Middle East because of the aforementioned allocation agreements"—

to which he had referred in other portions of his complaint.

In other words, your Honor, in this sentence he casts Cities Service in the role not of conspirator but of victim.

He continues:

> "Cities Service indicated to plaintiff a great interest in purchasing his entire supply of and obtaining a managerial contract for all Iranian oil exploitation and production in the Iranian Government"—

and I interpose here that in his deposition, your Honor, he testified that that "and" in that sentence must be taken strictly in the conjunctive, that he understood that the in- [fol. 11509] terest in acquiring oil was only in connection with the obtaining of a managerial contract for all Iranian oil exploitation and production and so forth.

He continues in his complaint:

> "It was contemplated that in return for its services Cities Service would receive payment in oil, thus assuring it a crucially needed source of supply."

Then he goes on to allege that Cities Service asked if plaintiff would be able to get an invitation from the Iranian Government that Cities Service inspect the installations and that plaintiff did get such an invitation and that the officials of Cities Service with the plaintiff did go to Iran in August of 1952.

Then he continues:

> "There, after a full inspection, Jones"—

referring to the president of Cities Service Company—

> "determined that the installation could be reactivated. He proposed"—

says the plaintiff—

> "to the National Iranian Oil Company that over a course of years Cities Service would exploit and man- [fol. 11510] age the Iranian oil resources while undertaking to train Iranian technicians in the United States and building a tanker fleet for the Iranian Government so that ultimately the Iranians could exploit and manage for themselves their valuable oil resources."

So Mr. Waldron says that he knows that Jones made such a proposal to the Iranian Government. I don't know how he knows, but in his deposition he said that Jones never told him what he proposed to the Iranians. He was never present during a proposal to the Iranians. But I lay those questions aside. He alleges that Jones made such a proposal to the Iranians.

But the interesting thing is, he does not say that the Iranians were interested or accepted such a proposal.

It stops at that point as far as the arrangement between Cities Service and Iran are concerned. He goes on instead with the following:

> "Learning of Cities Service's intention to force itself in this manner to the Middle East oil complex,

Gulf Oil and Anglo-Iranian during late August or early September, 1952"—

[fol. 11511] and I ask your Honor to underscore those words "during late August or early September, 1952"—

"conspired to and did offer Cities Service and Cities Service did accept a vast, long-term supply of Kuwait oil at a price far below the posted International Gulf of Persia price."

In other words, what do we have here? We have an allegation that Gulf and Anglo-Iranian conspired to offer Cities Service a big bargain, presumably to dissuade it from buying the Iranian oil.

Then he goes on:

"At this time and by these acts, Cities Service, without the knowledge of the plaintiff, entered into combination and conspiracy with the other defendants, and in furtherance of defendants' scheme broke off further negotiations with the plaintiff and with the Iranians."

Then he goes on and makes the next allegation:

"As a further consequence of this conspiracy"—

namely, the conspiracy to offer Cities Service a bargain in Kuwait oil—

"Cities Service eventually gained a participation in the consortium agreements relating to Iranian oil hereinafter described."

[fol. 11512] The next one says that we concealed these facts from him.

That is the first allegation he has about Cities Service, and the last one is in subdivision 9 of the same section, appearing on page 21 of the typewritten version of the complaint, where he says:

"Finally, on October 29, 1954"—

that is more than two years after this visit to Iran—

"Anglo-Iranian, Jersey"—

meaning Standard Oil of New Jersey—

"Socal"—

meaning Standard Oil of Southern California—

> "Texas, Gulf and Socony, with others, in furtherance and effectuation of the aforesaid conspiracy, combination and monopolization, entered into the consortium agreements which agreements divided up substantially all of the Iranian oil production, thereby bringing to final and complete frustration plaintiff's efforts to market Iranian oil in free competition."

There is the next sentence in which he mentions Cities Service:

> "Shortly after the signing of the initial consortium, Cities Service was permitted to purchase a participa-
> [fol. 11513] tion in the consortium."

Not another word in this complaint with respect to Cities Service, other than what I have just indicated.

So that we have, as against Cities Service, this allegation: That Gulf and Anglo-Iranian conspired in August and September of 1952 to offer Cities Service a bargain in Kuwait oil and that the defendants permitted Cities Service to purchase a share in the consortium.

So when I read that complaint, I assumed, and I believe correctly, that what the plaintiff was trying to charge Cities Service with was that it had been bought off from doing business with him by being given an opportunity to do business with Gulf Oil at more attractive terms.

But to make certain, we examined him with respect to these matters on his deposition, and I won't elaborate this

part of my argument, your Honor, for the reason that it is set forth in meticulous detail in my brief, and I must say for Mr. Lane that he does not challenge any of the things therein asserted.

Waldron repeated under oath time after time after time that until he discovered that Cities Service had made a [fol. 11514] contract to purchase oil from Kuwait, he had no complaint whatever against the conduct of Cities Service as against him, that until he learned of that transaction, he did not regard that Cities Service had done anything to hinder him, to boycott him or to boycott Iranian oil, that it had not participated in the accused conduct that he attributes to the other defendants of interfering with financing or tankers or any other thing.

He said, "But for Kuwait and the consortium, I would not have made Cities Service a defendant in this action."

I can't put it any more explicitly, because I have set it forth in detail, and I have had no resistance to it in the answering papers.

Just to give you the flavor of what I mean, let me read just one or two questions, addressed to Mr. Waldron:

"Q. And as of this morning"—the day of the examination, which was October 26, 1959—"you are telling me, and I assume truthfully, that the two events which you identify as causing you to name Cities Service as a defendant here are the contact with Gulf and the entry into the consortium?

[fol. 11515] "A. Yes."

This is an interesting question which I had not intended to read, but I think it might give you a little more of the flavor of this irresponsible plaintiff:

"Q. I believe you also allege in your complaint that Cities Service was therefore, as a consequence, permitted to buy a participation in the consortium in Iranian oil?

"A. Yes, sir.

"Q. Do you have any evidence that you can point to, Mr. Waldron, that Gulf and Anglo-Iranian conspired to make such an offer? Have you anything in writing?

"A. No.

"Q. Did Anglo-Iranian or any officer of Anglo-Iranian say so to you or anyone that you know?

"A. No.

"Q. Did Gulf or any officer of Gulf say so to you?

"A. No.

"Q. So I take it that you have neither written nor oral evidence that Anglo-Iranian and Gulf conspired to make an offer to Cities Service?

"A. All I know, Judge"—he is addressing me there—[fol. 11516] "is, the deal was consummated."

I asked him at page 6416:

"Q. Isn't that a correct statement of affairs, that with respect to the entire conspiracy recited in subdivisions 8 and 9"—

and those are the subdivisions referred to—

"down to Kuwait, down to the making of the Kuwait agreement, you have no complaint with respect to Cities Service?

"A. In general I would say that is correct, sir."

And so it goes on, paragraph after paragraph, item after item. I took him through this complaint from alpha to omega, and he said, "The only things that disturbed me were the making of the contract with Gulf for the purchase of Kuwait oil or the entry"—or he believed that Cities Service became a member of the consortium.

He admitted that he had no information of a conspiracy between Anglo-Iranian and Gulf to make the offer to Cities Service of a bargain. He had no information as to when—and the "when" is of the maximum significance—he had no information as to when Gulf offered to sell Kuwait oil to Cities Service.

[fol. 11517] He had no knowledge or information as to what was Cities Service's relationship to the consortium nor how it came about.

I am now telling you what he testified to under oath.

All he had was, he said he read a newspaper clipping, and he overheard a statement made by Mr. Jones.

The statement that he overheard Mr. Jones make, he says, was that once in Iran Jones said, "On my desk lies an offer from across the Gulf for oil at a dollar a barrel", and from that he conjectured that then Cities Service had received an offer of a bargain to divert it from the Iranian trade.

So, with the case in that posture, it seems to us that the thing to do, assuming that we had a plaintiff of integrity, was to demonstrate to him by proof which no rational mind could resist that he was wrong on both propositions, and we harbored the illusion, the fanciful illusion that when we had made such a demonstration to the satisfaction of any rational mind, that Mr. Waldron would abandon his suit against Cities Service.

So we therefore undertook to make a demonstration by [fol. 11518] contemporaneous, unquestionable, genuine documentary evidence that the Gulf offer of Kuwait oil to Cities Service was made before Mossadegh became Prime Minister of Iran, that it was made before Anglo-Iranian's oil installations had been nationalized. But, more important, the detailed terms of quantity, price, location, methodology had all been formally offered and accepted, offered by Gulf and accepted by Cities Service long before Cities Service had ever heard of the existence of brother Waldron.

And we then proceeded to demonstrate that after agreement had been reached formally and in writing—I am not speaking of some kaffeeklatsch conversation as to all of these terms—it was turned over to the legal draftsmen to put the language into refined terminology.

This was a contract which involved 21,000 barrels a day, every day, 365 days a year for 12 years. You can imagine that it required care. It was in a new trade. The contract required that a fleet of tankers be built for this particular trade. The contract required that the cost of those tankers be amortized as part of that trade and the price was deter- [fol. 11519] mined by relationship of what Cities Service would have to pay in Philadelphia for oil if it bought it in

the Gulf of Mexico in the American market, the transportation to Philadelphia, and it involved another thing: Cities Service did not have refining capacity to refine this oil, although it needed the products for its consumer business. [fol. 11520] So it involved a refining operation by Gulf Oil in its Philadelphia refinery for the benefit of Cities Service.

I mention these major categories of the contract to indicate to you that it is not at all surprising that it took some months before that was all finalized. But I have said under oath, and we have submitted the documentary proof, that the final contract as written is exactly, term for term, item for item, price for price, location for location, barrel for barrel, the same contract that was approved by the party, by offer and acceptance, before Waldron ever saw 60 Wall Street or 70 Pine Street where Cities Service has its offices.

It is not denied in the answering papers, it is not controverted, there is no suggestion, nobody has pointed to any provision of the ultimate agreement, which was signed later that year, showing a departure, although my learned adversary gives himself the liberty of, in one place in his brief, referring to increasingly attractive terms. I say that is not so.

Now, if it be true, and it is true, that long before Waldron was on the scene or Cities Service had ever heard of him they had already made a firm and binding deal—indeed, [fol. 11521] your Honor, the bids were already out for the tankers before Waldron was there—then how could this Kuwait deal ever have been the price paid to Cities Service in order to induce it to stay away from Iranian oil? The whole proposition, the whole foundation of Waldron's accusation as against Cities Service crumbles into the dust. So I thought that Waldron, being an honest man, would say, "Well, I made a mistake."

But how about the Consortium? So we said, All right, we will produce the documentation about the Consortium.

It is suggested in the complaint that as part of the price to buy off Cities Service from doing business with Iran and,

instead, diverting its attention to Kuwait the defendants invited Cities Service to become a member of the Consortium. Well, that Mr. Waldron claims he learned in another newspaper item.

The trouble with history is, in the United States, anyway, that it doesn't get rewritten like in some other parts of the world. It so happens, and the documentation we have produced are not our documents, they are the State Department papers, they are the papers of other parties, that [fol. 11522] the Consortium idea was not even a gleam in the eye at the time that Mr. Jones said, "I have struck a dry hole." Moreover, and here is the interesting thing, it appears that the defendants did not admit Cities Service to membership. Indeed, they excluded them. They excluded all the independents. And thereupon, there was a protest on the part of a great many independent oil producers in the United States, including Cities Service, whereupon they went to the State Department, and it was the State Department that urged the other members of the Consortium to set aside a 5 per cent interest for American independent oil companies, and it was the State Department that suggested that the firm of Price, Waterhouse & Company be designated to pass upon the financial ability of those who would apply for participations in the Consortium, a great many companies applied, including Cities Service, and some were rejected and some were accepted and finally 12 were accepted.

Then the documentation shows that Cities Service insisted that, because it had asked for the entire amount, the entire 5 per cent, and whereas some of the other companies had asked for small fractions, the ultimate allocations should be in proportion to the original request. There was [fol. 11523] a tremendous debate about it. The defendants did not participate in those meetings. Only the independents participated. The minutes of those meetings are here. And the result was that they could not come to agreement, and they then finally went to Herbert Clark Hoover, As-

sistant or Under-Secretary of State, and he decided that it should be on an equal allocation.

Then this documentation shows that that would have turned out to give Cities Service 45 hundredths of 1 per cent of the Iranian Consortium and, rather than be involved in that kind of a niggardly thing, Cities Service assigned its share to Richfield Oil, a company in which it was a substantial stockholder. All this happened in 1954, long after the dry hole, and the notion, therefore, that this was a price for diversion is silly.

In the answering papers, your Honor, we discover a brand new approach to this entire thing. I find no challenge to any statement of fact in our moving papers. I find no denial of the genuineness or integrity of any document that we have served. What do I find? The whole thing is stood upon its head. We are now told that the Iranian trans- [fol. 11524] action was vastly more valuable than the Kuwait transaction. Whereas in the complaint it was that there was a tremendous bargain offered to Cities Service in order to induce it to stay away from Iran, now it is something different. Now they say Cities Service had a choice to either take the tremendous multi-billion dollar opportunity or the trivial opportunity that was represented by Kuwait. Why did they take the lesser?

Well, if it is the lesser, how can you bribe somebody to stay away from the multi-billion dollar transaction by offering him a lesser one? The whole thing makes no sense. The whole thing becomes absurd and ridiculous. You cannot bribe a man with an apple when he can get an orchard full of apples. Now they tell us that the choice was between the greater Iran and the lesser Kuwait.

So they say to us:

> "Well, who knows? Maybe there was some secret deal."

Maybe there was some secret deal; and maybe there are men walking the other side of the moon, your Honor. If

there is any proposition laid down in the cases on summary. [fol. 11525] judgment, it is that you cannot create a genuine issue of a material fact by asking a suspicious question.

I solicit your Honor's attention to two opinions which I will cite to you, one by Judge Leibell, as meticulous a craftsman in this field—I am sure your Honor will share my view—as any judge who ever sat in this court, in the Banco de Espana case where, interestingly enough, the man who was raising the suspicious questions was not a raving maniac like the man in the Griffin case and about whom my friends somehow or other feel that because he was a raving maniac the Supreme Court's opinion loses some significance. I didn't understand that that was the way you rate Supreme Court opinions. In any event, the gentleman who raised the suspicious questions was a very distinguished gentleman. His name was John Foster Dulles, then the senior partner of Roy Steyer whom I saw two minutes ago, there he is, and Mr. Dean. But he was raising suspicious questions about some money that had been shipped by the Republican regime of Spain and which the subsequent Government was trying to reach from those who had preceded them. But Judge Leibell said: All these ques- [fol. 11526] tions that you are asking are just raising suspicions. I need a material issue, not a question.

And another case to which I would ask your Honor's careful attention is a decision by Judge Weinfeld in Morgan v. Sylvester. There, too, suspicion does not make an issue. Questions do not make a fact. Inquiries do not make evidence.

I make these comments because we have been served with a very interesting set of papers. We have been served with a set of papers which, instead of asserting some measure of evidence, such as the cases have said you need in order to qualify as presenting an issue, or some proof or which finds out some deficiency in our proof, we have been handed a set of questions, very interesting questions. I think, if we were having a program on television entitled "Face The

Lawyers," they would be very useful material for a script for that kind of a show.

For instance, they say:

"Why did Cities Service not take the Iranian oil?"

I say you haven't got a complaint and, since you haven't got a complaint, you haven't even got a license to ask me the question. I say you haven't got a complaint because

I say you haven't got a complaint and, since you haven't [fol. 11527] the complaint as you wrote it now lies in the dust. Today you couldn't get a lawyer to certify to the following complaint. What would he have to say? An honest complaint in this case at this moment would read something like this:

> "I was peddling Iranian oil, and among the prospects that I visited was Cities Service. I told them about it. They said they were not interested in the oil I was peddling but they would be interested in the oil refinery from which the oil came. So I took them out to look at the refinery and then they did not make a deal. Now I would like to know,"

says the complaint,

> "why didn't you buy that refinery? Why didn't you do business with me? What price was paid to you for not doing business with me?"

Is there any doubt in your Honor's mind that that kind of a complaint would not survive even the very tolerant attitude that the judges of this court have exhibited towards pleadings under the new notice form? Questions don't make allegations.

[fol. 11528] And here is the development in this case where we started with allegations in a complaint which on their face satisfied the Federal rules. From there we went to the deposition and discovered that the statement on information and belief was false; he had no information which would support a rational belief; that he was relying in his

complaint upon a misunderstood snatch of a conversation and on a misunderstood scrap of paper, and we can demonstrate that both of those were without merit or foundation. So, having traveled down to his conjecture, he now says:

"I am going to ask you some questions."

I don't believe that it is the law of this jurisdiction that you can go ahead and ask your prospects, who have refused to do business with you, "Why didn't you do business with me?" And I don't believe that the antitrust law says that every drummer who finds that his prospect won't deal with him has got to respond to an examination before trial before he can dismiss his complaint. And I don't believe that every promoter can bring his sucker into court and make him under oath say why he wouldn't do business with him.

I think when I said what this complaint would say I [fol. 11529] omitted a very interesting proposition. A more careful statement of that would have to be:

The plaintiff says "I have never had any contact with the oil business and I haven't any money to go into the oil business and I don't know anybody in the oil business, but nevertheless I am trying to sell oil." And he approaches Cities Service, as I have indicated, and offers them some oil and they say they are not interested in his oil but might be interested in managing the refinery. Then Cities Service inspects the refinery, and the plaintiff in his complaint and in his deposition refuses to say, because he doesn't know, whether the owner of the refinery was willing or not willing to make a deal with respect to the refinery, so that the negotiations drop off. And I say that on that situation the plaintiff is not entitled to an examination. I say the defendant is entitled to a summary judgment.

The theory now advances that, because the plaintiff made a contact with Cities Service and had a conversation in which Cities Service exhibited some interest in his business, from that point on Cities Service is infected with the

virus of antitrust violation, that Waldron is a kind of [fol. 11530] Typhoid Mary carrying the germ of antitrust violation.

Once you have touched his hand, you either do business with him or you are going to take the stand and testify why you did not.

I think, if we develop that kind of a notion in the antitrust law, we are going to restrain trade to the degree where all the conspiracies that have ever been tried under the antitrust laws would be but a twinkling of the eye.

If the original theory is true as recited in his complaint that the Kuwait oil was a better buy than the Iranian oil, then the answer to the question is a very simple one:

A buyer is entitled to buy that which is more attractive to him in the marketplace and he doesn't have to explain to anybody why he does it. If the new theory is true that the Iranian transaction was vastly better and more important than the Kuwait transaction, then again the story makes no sense because how can you bribe Cities Service with a lesser in order to give up the bigger?

Oh, they come up with a very dynamic question. They say:

"Was Jones reached?"

[fol. 11531] If it were Walter Winchell's column, I would say that would be entitled to blackface type. But what does it mean, "Was Jones reached?" Are we talking here about Mr. Jones' private reasons for doing what he did or are we talking about whether he brought Cities Service into a conspiracy? Where is there an allegation supported by a shred of evidence that Cities Service conspired with anybody to do anything? But we have been asked some questions, your Honor, and, like the Frenchman, I would say just for the sport let's examine some of these questions.

Question No. 1: Are there any documents among those not produced by Cities Service which indicate that the Iranian negotiations and the Kuwait negotiations crosse

paths? Were stalemates avoided or better terms offered in Kuwait as an inducement to give up Iran?

The first answer, of course, is that it makes no difference. Cities Service owed no duty to the plaintiff to prefer Iran over Kuwait or to prefer Kuwait over Iran. But actually as a fact it couldn't be as the plaintiff says because the final contract we avow under oath and they have not challenged has exactly the same terms as they offer which was con- [fol. 11532] summated and the acceptance which was consummated before Waldron appeared on the scene.

Now, it can't be that some of those papers would show that Gulf threatened to take away Kuwait if they didn't abandon Iran because you cannot threaten somebody with denying him 20,000 barrels a day unless he gives up 600,000 barrels a day. What kind of a threat? They now say that Kuwait is the lesser. Besides, threats don't make conspiracies.

The second question they put:

Was the right to participate in the Consortium a valuable right? Of course it was a valuable right. You don't find all the American independent companies scrambling and scrapping and fighting and haranguing and arguing to get in if it is not a valuable right. Why do you suppose Cities Service struggled to get participation in the Consortium? They must have thought it was a valuable right. I don't know whether it has turned out to be valuable; but, that everybody thought it was valuable, of that there can be no question.

But was it the price to pay off Cities Service? Again, there we have the facts of history. The Consortium happened long after the dry hole negotiations had stopped. The [fol. 11533] participation in the Consortium was never attended by the defendants; it was the State Department. Was the whole State Department, was the Attorney General, was the National Security Council, all of whom cooperated in creating the Consortium, were they all corrupted for the sole and single purpose of buying off Cities Service from

doing business with "moth" Waldron? And it is interesting to suggest here that they say "In the palm of our hand lay a hundred per cent of the Iranian oil industry and we gave that up in exchange for a 45 hundredths of 1 per cent interest in Iranian oil."

The question addressed to Mr. Jones is irrelevant because the true question is:

Did Cities Service conspire with others to boycott the plaintiff? Of that there is not one line of proof. Indeed, the only answer given to every question designed to elicit the answer to that inquiry by the plaintiff Waldron is: I don't know. I had no evidence when I framed my complaint. I have no evidence today. But, who knows, maybe some day I am going to find some. Waldron doesn't even claim that Jones agreed to do anything.

[fol. 11534] In rapid questioning sometimes a little truth emerges. Let me read you a question and an answer which appears on page 6106:

"Q. You say in your complaint 'by these acts.'"

You remember the allegation in the complaint:

By these acts Cities Service joined the conspiracy.

"Will you give me a bill of particulars of these acts that you mention in the complaint?"

"A. What do you mean, Judge, a bill of particulars?

"Q. Just state which are the acts that you refer to. Do you mean more than the acceptance of the contract?

"A. The negotiation of the contract and all of the terms were agreed upon, and the way that they were agreed upon and the reason for agreeing upon them"—he is talking about the Kuwait contract—"that Cities Service would be deterred from taking Iranian oil by the acceptance of this contract with Gulf for oil from Kuwait."

By presuming that Cities Service was going to be deterred from buying Iranian oil because they bought Kuwait oil, I still don't see the basis for an accusation of a participation in a conspiracy to boycott Mr. Waldron.

[fol. 11535] Now, your Honor, questions, as I said, don't make a complaint. The plaintiff must have the answer and it must be supported by something. It must be supported by some evidence, as Judge Weinfeld said in the Moran case, and it takes more than mere desire on the part of the plaintiff to entitle him to ask rhetorical questions before his complaint is dismissed.

They ask another question:

Did Cities Service have a hand in causing Richfield to drop the plaintiff so precipitously? That is a perfect illustration, your Honor, of the utter irresponsibility which permeates the plaintiff's relationship to Cities Service in this complaint. He says nothing about Richfield in his complaint. He did not accuse Cities Service of having conspired with Richfield against the plaintiff. But, in the course of his deposition, on a half dozen different occasions, as I would put him a question, he tried to see if maybe he could pin something on Cities Service. I won't take the time now to point them out, but it is there and I hope your Honor will read this deposition. It would well repay your effort. It won't take so very long. It will save many weeks and months of trial.

[fol. 11536] Richfield is a company in which Cities Service has a stock interest, as I have indicated. The plaintiff tried to sell oil to Richfield as he tried to sell it to every company in the United States, and Richfield did not buy from him. So he sits there on the witness chair and speculates:

Maybe Cities Service was the company that induced them not to buy oil from him. By all that is sacred, does that entitle a man to bring an action? A man is run down on the street, so you bring the next bystander into court and say: "Well, maybe you had something to do with that automobile." Does he assert that he has a shred, a scintilla, a thread of proof to suggest that Cities Service induced Richfield not to buy from him? Not a word. But a question, in his judgment, does duty for an allegation. I don't know

why he didn't ask him whether Cities Service had a hand in causing the Korean War or, maybe, this misadventure that we had in Russia on Friday.

There is an interesting paragraph in the plaintiff's brief which is perhaps as good a clue as any to the misconception which underlies the plaintiff's approach to this case, and with your permission I would like to call your Honor's [fol. 11537] attention to it. It is on page 15 of Mr. Lane's brief, and it reads as follows:

> "Rule or no rule, elementary principles of common justice would seem to dictate that when an individual has been put through what this plaintiff has had to endure, when he has secured through his own initiative and resourcefulness a valuable contract and has then introduced one of the great oil companies to an undreamed of opportunity only to have the door slammed in his face and the exploitation of his contract frustrated, the very least that he can expect when he brings to the bar those whom he believes have opposed him, betrayed him, is that he will have an opportunity to inquire into their actions before his case is thrown out."

I respectfully suggest that is just utter nonsense. First of all, I don't know what my good friend, Mr. Waldron, has endured. But, if he has endured anything, it was not at my hands. He sued Standard Oil of New Jersey in a big lawsuit, so Standard Oil of New Jersey examined him. He sued Gulf, et cetera, and each one of those companies examined him because he brought suit against them. I never made a motion to examine him. I only cross-examined him [fol. 11538] and, when we did, we examined him for exactly four and a half days, and I suggest, your Honor, that when a man sues my client for $109 million I not abusing him when I examine him for four and a half days in succession, one day after the other. I did not bring him in from Denver

time after time. So I don't know what he is talking about when he says what he has endured.

If he means that he has been subjected to delay, your Honor won't be deceived by that. The last thing in the world that the plaintiff wants is to bring this case on for trial in a hurry. He can't try this case until the Government has tried its case because he hasn't got the proof that he hopes the Government has. So, while theoretically there is all this shouting and murmuring and grumbling about "Look how long you have been examining me," the actual fact is that that has served the plaintiff's purpose very well because otherwise he would have been on trial now. Where would he be if he were on trial? He would be out on the sidewalk because he hasn't got the proof. But, in any event, Cities Service has not caused him to endure anything, and Cities Service has not caused him to suffer. But, even if it had, does it mean that because the defendant has examined [fol. 11539] the plaintiff, therefore, although the plaintiff hasn't got a case, hasn't got a complaint that a lawyer would certify, hasn't got a proposition to hang his hat on, he is entitled to examine everybody on the defendants' side because otherwise it isn't fair play? Well, that is the way you play potsy on the sidewalk on the East Side, but that is not a courtroom operation that I have ever heard of.

And I don't know what is meant by "rule or no rule." I won't work in this courthouse with no rule. I want a rule, and my good friend the plaintiff wants a rule. We are here to observe a rule, and the rule that I am interested in is Rule 56 which says that I am entitled to summary judgment when the plaintiff's case is such that there isn't a single genuine or material issue to try.

I have already indicated to you, your Honor, that the cases in this circuit and in this district do grant summary judgment, that the fear which encompassed some of the judges for a few months after Arnstein v. Porter has now been dissipated, that it is a great and important remedy, and particularly, your Honor, I call your attention to the

comment of Mr. Justice Black. I mention Mr. Justice Black [fol. 11540] because, unlike Judge Frank, he is the great advocate of the jury trial, if you recall my psychoanalysis of Judge Frank, and Mr. Justice Black says in his opinion in the United States Supreme Court, U. S. v. Employing Plasterers Association:

> "... at any time a claim is frivolous and expensive full-dress trial can be avoided by invoking the summary judgment procedure under Rule 56."

And I need hardly refresh your Honor's recollection that the subject of the so-called big case has received a great deal of attention among your colleagues and yourself in this court and in the other district courts of the United States, and many conferences and committees have been appointed and examined that problem and they finally published a thing called "Handbook of Recommended Procedures for the Trial of Protracted Cases," and I would like to quote this language from there, page 28:

> "The judge's efforts may well be directed first to eliminating false issues. Footnote: The summary judgment procedure is available to avoid expensive trials of frivolous claims."

[fol. 11541] I think this Court has a perfect right to say to the plaintiff: You declared under oath on your deposition that the only reason you made the defendant Cities Service a defendant in this case is because of what you thought happened with respect to Kuwait, you thought that that deal was made in August and September of 1952, and because of what you thought happened in the Consortium because you thought that the defendants invited Cities Service to become a member, and that is why you brought this suit, and so you stated under oath. Now you have discovered that you are mistaken: In decency and in good conscience you ought to withdraw your complaint and for your failure

to do so we think that the motion for summary judgment ought to be granted.

Now, your Honor, I may want to put in a little supplemental brief in response to the plaintiff's brief, and I will see at the conclusion of the argument where I need to renew that request.

The Court: We will take a ten-minute recess.

(Recess.)

[fol. 11542] ARGUMENT BY MR. LANE

The Court: Mr. Lane, you may proceed.

Mr. Lane: May it please the Court, I shall address myself in the beginning to Judge Rifkind's argument, and I shall endeavor to be a good deal briefer than he was.

I do not think that it adds anything or that it aids your Honor at all in reaching a decision on this motion to have a jury speech made to you in which the plaintiff is described as a drummer or as moth or an irresponsible person, and as Judge Rifkind was playing upon the fact, this is a small business man from Denver, Colorado, who undertook to inject himself as an interloper into the oil business, and I was reminded of Judge Wyzanski's reaction to the plea by the United Shoe Machinery Company in the antitrust case brought by the Government in which the United Shoe Machinery Company said that they needed a vast aggregate of wealth in order to effectively conduct their research in the processes for manufacturing shoes, to which Judge Wyzanski said, "Here come a small Greek, who doesn't have the money that you have, doesn't have the experience that you have and consequently doesn't know that he can't glue soles to uppers, so he goes ahead, and he does it." [fol. 11543] So in this lawsuit that we bring before you, we have a man who did not know better than to go to Iran to get a contract for Iranian oil. It does not seem to me that that is an indictment of him. It seems to me that that is a credit to him rather than otherwise.

Also, Judge Rifkind speaks of the exploitation, the expropriation of oil in Iran as being some sort of an inter-

national brigandage. I remind the Court that Mexico expropriated its oil, that is, it nationalized it in the same way, and that Great Britain nationalized her coal mines. Where is the great distinction between the Iranian Government nationalizing its petroleum resources and England nationalizing its coal?

I am of the opinion that this motion for summary judgment is, in the words of Judge Learned Hand, in Bozant v. Bank of New York:

"Another mistake and attempt to dispose of a complicated fact case by summary judgment."

Notwithstanding that, we welcome it, because it seems to us that it illustrates better than anything else that we could think of, the plight in which the plaintiff—and I may say his counsel—are placed in this litigation.

[fol. 11544] We do not apologize for the action which we brought here. We do not accept the condemnation in Judge Rifkind's argument that we are in some way men of no integrity to pursue this cause of action. It is seriously brought. It has a serious basis, and we only want the opportunity prosecute it.

The situation, it seems to us, is the same as that which presented itself in Loew's, Inc. v. Bays, which was another antitrust suit, a civil suit, in which immediately upon the filing of the complaint, the defendants came in with motions of one kind or another and then interrogatories, and then on the basis of those interrogatories and before issue was joined, moved for summary judgment, and the plaintiff responded under Rule 56(f), saying that he should have the opportunity at least to inquire before the curtain is run down.

The motion was granted, and it was reversed on appeal.

We are precisely in that same situation on this antitrust case, for the reason that with their notices of appearances, each one of the defendants—I guess Judge Rifkind would [fol. 11545] correct me on this—but most of the defendants served notice contemporaneously with their notices of ap-

pearance that they would examine the plaintiff before trial, and at the same time they moved by order to show cause to prevent him from conducting his own discovery proceedings, and the plaintiff consequently has been unable to proceed in his character as a plaintiff from the moment that the defendants appeared in the suit.

Judge Rifkind refers to Mr. Justice Black's statement which he has quoted at the top of page 44 of his brief that at any time a claim is frivolous, an expensive, full-dress trial can be avoided by invoking the summary judgment procedure under Rule 56.

A full-dress trial can be avoided, I concede, but what is trying to be avoided here in this present posture of this lawsuit is not a full-dress trial. The attempt here is to prevent the plaintiff in this lawsuit from proceeding as a plaintiff to get the evidence. If it does not get the evidence before trial through the only sources where it might be thought to be available, then perhaps the motion could be made and perhaps the motion should at that time succeed.

But I call your Honor's attention to such decisions as [fol. 11546] that of your Honor himself in Austin Theatre v. Warner Bros. Inc., an antitrust case in which the plaintiff alleged that certain defendant theatres were in a conspiracy to restrain trade, and I call your Honor's attention to Judge Walsh's opinion in Breswick v. Briggs—that was not an antitrust case. That was a derivative stockholders' case. But in each of those cases it was obvious that in the first place, most of the telling evidence would have to come from the defendants themselves, and, in the second place even if you examined the defendants and they came in with plausible explanations for the reasons for doing the things that they did do, still where there is a great question as to why they did those things and what the reasons are behind their actions, that, then, is a question for a jury and not appropriate for summary judgment.

At the outset of his argument, Judge Rifkind sought to explain why Judge Frank had experienced the mental

aberration which he did in Arnstein v. Porter, and Judge Rifkind said that because of his affection and admiration for Judge Frank, he could only explain it as an unconscious mechanism of compensation for the fact that Judge Frank has been opposed to jury trial.

[fol. 11547] I call Judge Rifkind's attention now to the fact that in Arnstein v. Porter, Judge Frank suggested that if a jury had not been demanded in that case, it would be the better part of wisdom for the trial court to have empaneled a jury for an advisory verdict. So that in the very case that Judge Rifkind seeks to explain away, Judge Frank, far from compensating for his antipathy to a jury, was suggesting that a jury would be appropriate.

As I say, the attempt here is to cut this plaintiff off before issue is joined, before he has had an opportunity to take any depositions or to discover any documents himself, and even before the time within which he can amend his complaint has run out.

If you look at the complaint, your Honor—I am now referring to page 18, the subdivision which refers to Cities Service—you start first of course with the allegation that there is an international oil conspiracy to monopolize the Middle East oil. That has been alleged not, I suggest, frivolously by the United States Government. As you know, the allegations on that head have been incorporated in the Waldron complaint. It is not denied, and that is the thresh-

[fol. 11548] old of this litigation.

We don't, of course, as Judge Rifkind implies, pretend that this whole international conspiracy was aimed at Mr. Waldron. We don't infer that he has some persecution complex that motivates this action, but we do say that there was a conspiracy to monopolize trade in Middle East oil, and the gravamen of our complaint against Cities Service is that it joined that conspiracy.

The allegations leading up to that and incorporating it begin at page 18 of the complaint, I read from paragraph 6:

"Prior to 1952 Cities Service had been unable to obtain a source of crude oil in the Middle East because of the aforementioned allocation agreements."

That is not denied, your Honor. That is an allegation that Cities Service tried to get into the Middle East and was excluded by the cartel. That is not denied, because there is no denial of the complaint at all and because it is not referred to in the moving affidavit, so you will take that for this purpose as conceded.

Continuing:

[fol. 11549] "Cities Service indicated to plaintiff a great interest in purchasing his entire supply and obtaining a managerial contract for all Iranian oil exploitation and production from the Iranian Government."

That is not denied in Mr. Hill's affidavit, and of course it is not otherwise denied, and I take it that it must be accepted as proof for purposes of this motion.

"It was contemplated that in return for its services Cities Service would receive payment in oil, thus assuring it a crucially needed source of supply."

That is not denied, and the fact is that the documents which are produced here in court from the Cities Service file indicate that it could not possibly be denied, because Cities Service was crucially interested in obtaining Middle East oil and was looking to a Middle East source at the time.

"Cities Service asked if plaintiff would be able to obtain an invitation from the Iranian Government to itself"—

that is, to Cities Service—

"requesting that Cities Service inspect the Iranian oil [fol. 11550] installations for the purpose of determining whether they could be profitably reactivated."

That is not denied. It is conceded. The invitation itself, signed by Prime Minister Mossadegh is attached to the

opposing affidavit, and I remind your Honor that this invitation from Prime Minister Mossadegh, which Judge Rifkind referred to in only one sentence, was the subject of days and days of negotiation before Waldron went to Iran with his associate, Nelson, to seek it. But it was impressed upon Mr. Waldron that it was of the utmost importance that that invitation appear to be spontaneous from the Government of Iran to Mr. Jones, the president of Cities Service and that elaborate precautions were taken to conceal the true origin of that invitation.

In point of fact, the invitation was written out in the Cities Service office before Waldron and Nelson went abroad. They took it with them and, as the testimony indicates, when they reached Iran, there was a momentary revolution in progress; Prime Minister Mossadegh had been deposed, but Waldron was assured that if he would stay and wait it out, this would be a temporary affair. He stayed, and it blew up in about ten days, and then he got [fol. 11551] into the hospital to see Prime Minister Mossadegh and told him what he wanted. The Prime Minister recognized this as a chance to break the blockade which had been throttling Iran ever since the previous year. He asked that the invitation be put into French, which it was, and he signed it. Waldron brought it back, taking, however, a copy for himself, which we now have in evidence.

So it is not denied that Cities Service was looking for that invitation, and I don't think that it adds anything to the argument to condemn Mr. Waldron as looking for a "fast buck." I think W. Alton Jones was looking for billions of fast bucks, and I don't think that to put it in that language is to condemn either of them. But I think that both of these men, Waldron and Jones were intending a business proposition and that Jones was not going to Iran simply out of some patriotic motive, and if you will consider the many conversations which are recorded here between Jones and Waldron and others about Jones

not being afraid of the British lion and about his suggestion that if they made trouble for him, he would pour the Iranian oil down their throats and what-not—those things are not denied at all, and they show that Cities [fol. 11552] Service was considering undertaking a task of enormous magnitude, that is, to reactivate the Abadan refineries, which are the biggest in the world, and take over the whole Iranian oil industry, and, if they had, Cities Service would have had to fight the international oil cartel, just as Waldron found that he could not sell his oil because of the opposition of that cartel.

It was a most serious undertaking, and that was the reason in large part for the secrecy in the manner in which it was undertaken.

It says in the complaint:

"On July 26, 1952, plaintiff in audience with Dr. Mossadegh obtained the Prime Minister's written invitation addressed to W. Alton Jones, president of Cities Service."

That is not denied.

"Jones accepted the invitation and on or about August 16, 1952, together with plaintiff and numerous technical assistants from Cities Service left for Iran."

The testimony shows that he took with him his production man, his head refining man, his head transportation man, and they were in Iran for, oh, I guess four [fol. 11553] weeks. If they went over there on August 16, and Jones was being interviewed by the press in Teheran on September 19, they were there for a month. They weren't there for their health. They were there on business, and it was very important and serious business.

None of this is denied. It is not alluded to in the moving affidavits, but neither is it denied.

"There, after a full inspection, Jones determined that the installations could be reactivated. He proposed to the National Iranian Oil Company that over the course of

years Cities Service would exploit and manage the Iranian resources while undertaking to train Iranian technicians in the United States and building a tanker fleet for the Iranian Government so that ultimately the Iranians could exploit and manage for themselves their valuable oil resources."

Not any of it is denied. Not any of it—I was about to say is capable of denial. I don't know what the capacity is for denying it, but the fact is it is not denied and must be taken as true for the purpose of this motion.

[fol. 11554] The allegation goes on:

"Learning of Cities Service's intention to force itself in this manner into the Middle East oil complex, Gulf and Anglo-Iranian, during late August or early September, 1952, conspired to and did offer Cities Service and Cities Service did accept a vast long term supply of Kuwait oil at a price far below the posted International Gulf of Persia price, to wit: a 12-year contract for 90,000,000 barrels of oil at $1 per barrel, or the equivalent, approximately, of $7.40 per metric ton at a time when the posted price was approximately $12.89 per metric ton."

That is not denied, nor is it, so far as I know, capable of being denied that Gulf and Anglo-Iranian conspired together. The contract which was offered is fully set forth in, I think, Exhibit 29 of the documents which have been presented.

But I take serious issue at this point, and it seems to me a major defect in Judge Rifkind's argument with his statement that that contract had been reached, that the agreement had been reached between Cities Service and Gulf before they ever heard of Waldron.

[fol. 11555] I recall his language. He spoke of an offer and acceptance before that time. I think also he criticized our answering brief, where we referred to the increasingly attractive nature of the offer made by Gulf to Cities Service.

Now, if you will look at these documents which have been offered by the defendant in support of its motion, you will find that they did not reach an agreement at any time prior to January 1953.

I agree with Judge Rifkind that they discussed an agreement going way back to 1948, and it was a very complicated agreement, and the terms took a long time to thresh out, and the formula for it, for the price for the oil was quite a while in evolving.

The cold fact is that when Waldron walked into the Cities Service office with his invitation from Prime Minister Mossadegh, Cities Service was not bound to Gulf, and Gulf was not bound to Cities Service, and the fact is also that the final contract as signed in January 1953 has many important terms in it which were not contained in the memorandum of agreement—or not the memorandum of agreement, but the draft of the contract which was current at or about the time that Waldron came into [fol. 11556] the Cities Service office for the first time.

So if your Honor looks at those drafts and then looks at the contract in final form, as adopted in January 1953, you will find that there were very serious questions, for example, about how much crude oil Gulf could store and how much in refined products Gulf could store at its Philadelphia refinery, where Kuwait oil was to be refined, and what the rate of delivery of that oil would be and what the charge would be for delivering the oil, whether into tank cars or into trucks or into barges or by pipe line or what it was—all of those things were worked out on a basis apparently acceptable to Cities Service, and so, I suppose, acceptable to Gulf. But long after Jones came back from Iran. They were not in the draft agreement prior to the time he went.

So it seems to me that what we have said in our reply is beyond dispute, that at the time when Waldron came to Cities Service with the invitation, and Jones went over to Iran with his team of experts to look at the installations in Iran, Cities Service had a choice: It could at that time

have undertaken to reactivate the Iranian oil industry and to build or charter or obtain otherwise tankers to transport [fol. 11557] that oil, and it would then also have had to undertake to establish the facilities for marketing that oil throughout the world, or it could press to a conclusion its negotiations with the Gulf Oil Company and make a deal for Kuwait oil on a 12-year basis, which would also cover refining and transportation.

It was a hard choice, perhaps, to make, because, as Mr. Jones said in Paris on the way home, "Gerry, this is not millions. This is billions, or else it's a dry hole."

If Jones had gone ahead in Iran, he would have had to fight the oil world. He would have had to oppose the international cartel in the Middle East. He would have had to take on the opposition which blocked Waldron, and even the great Jones, with all his bombast about pouring the Iranian oil down Willie Frazer's throat, must have thought long and hard before he gave up that opportunity for those billions of dollars.

Now, don't forget, too, that before Waldron over to Iran with Jones, there were long and serious discussions about the compensation that Waldron and his associates were to receive. At the outset there was talk about a million dollars to secure this invitation. That was in addition to getting 1 to 2 cents a barrel on oil and products. [fol. 11558] But at the end there was simply a gentleman's understanding that the compensation would be negotiated within the range of 1 to 2 cents on the oil and on the products after Cities Service had reached an agreement with the National Iranian Oil Company which would fix its interest in the Iranian oil picture.

So don't, I beg your Honor, be deluded by the thought that this is simply a patriotic junket by Mr. Jones, who was going over to Iran to save the Western Hemisphere from the crisis which the nationalization of Iranian oil resources had provoked. This was business, and it was business which Jones didn't choose to share with the cartel before he got well into it and knew what he could do with it.

Now we go on in this complaint, and we say:

"At this time and by these acts Cities Service, without the knowledge of plaintiff, entered into combination and conspiracy with the other defendants and in furtherance of defendants' scheme both are for further negotiations with plaintiff and the National Iranian Oil Company and refused to enter into any contract or arrangements with reference to Iranian petroleum."

[fol. 11559] That is not denied and must, I suggest, be taken as proof for the purpose of this motion.

You will read Mr. Hill's moving affidavit here in vain to find anything which he says that the plaintiff knew about the negotiations which were going on with Gulf at the time when he took Jones and his party over to Iran, or you will not find in the affidavit any denial that Cities Service entered into combination and conspiracy with the other defendants.

You will not find any denial that in furtherance of defendant's scheme, Cities Service broke off further negotiations with plaintiff and the National Iranian Oil Company and refused to enter into any contract or arrangements with reference to Iranian petroleum.

What has happened here, I suggest, as betrayed by Judge Rifkind's statement, was that when he read the complaint, his mind jumped to the conclusion that what the plaintiff was trying to allege was that Gulf bought off Cities Service at the crucial moment when a contract was about to be concluded between Cities Service and the National Iranian Oil Company.

Now, that is not a bad conclusion on Judge Rifkind's part, but it is not alleged. If I were asked to amend the [fol. 11560] complaint now so as to state specifically that what we are alleging was that Gulf bought Cities Service off, I would not hesitate to allege it. I could say that that allegation would not be negated by the documents which have been submitted leading up to the final Kuwait con-

tract in January 1953, but I would say this: That we don't allege in the complaint that Gulf bought Cities Service off and that is equally valid would be that Jones, through the perfecting of his hold upon the Iranian oil industry, could force his way into the Middle East cartel, from which his company had long been excluded, by threat on his part that if they didn't let him in now, he was going to take the whole Iranian oil industry from the Anglo-Iranian Oil Company.

But what we say in the complaint is neither one nor the other. What we say in the complaint is that the plaintiff had this contract—and there is no question about the validity of his contract; nobody denies that he had the 15 million-ton contract at more than $4 under the posted Persian price for the first 3 million tons and $2 for the next 12 million tons.

What we say is that in addition to that contract, which Cities Service would have taken over if it had made a [fol. 11561] deal with Iran, Waldron introduced Cities Service to the opportunity to become the biggest oil company in the world, and then something happened. It was, we say, in the palm of Cities Service's hand. We believe that it was in the palm of Cities Service's hand, or we wouldn't say so.

Then Waldron left Iran and went to Paris. Jones and his team went to Kuwait, and when they met again in Paris something had happened, because for the first time Jones said, "Perhaps this is a dry hole."

So that either Gulf bought Cities Service off or Cities Service forced itself into the Middle East cartel as a partner of Gulf in Kuwait, Gulf itself being a partner of Anglo-Iranian, or something of that nature happened.

But in an antitrust case, it is no indictment of the plaintiff's complaint that he has to pose this type of question. Of course, things will not appear to be—a conspiracy is not to be found upon the face of the documents, and all we are saying here is that the documents which are pre-

sented are a selected group, which are inconclusive when considered with reference to our allegation that Cities Service joined forces with the cartel, making a precisely 180- [fol. 11562] degree turn at the very point when Cities Service had the choice of taking over the Iranian economy or the Iranian oil industry.

Now we go on and say that as a sequel to this, Cities Service had the right to participate in the Consortium.

It is not as simple as Judge Rifkind would make out, namely, that the Consortium excluded Cities Service and that Cities Service had to fight for the right to get a participation in it.

We don't know at this point what understandings there were at the time when the Consortium was negotiated among the five American Majors who have been sued in the civil antitrust case by the Government.

All we do know is that they established some standards by which the others might participate up to 5 per cent. We don't know whether Cities Service was consulted or not at the time when those standards were made.

We don't know whether those standards were such that nobody but somebody like Cities Service could get in, and if Cities Service had the assurance that the standards [fol. 11563] would be such that it could get in if it would give up this opportunity which it had to take over the Iranian oil industry—

The Court: Mr. Lane, I am going to interrupt you to declare a luncheon recess until 2 o'clock, and at 2 o'clock I will be very happy to have you continue your presentation, following which there will be rebuttal if desired, and sur-rebuttal if desired, and then we will take up the question of further memoranda, and the Court desires to put some questions to counsel, having held the questions during the presentations of counsel.

(At 1.50 p.m. a luncheon recess was taken.)

[fol. 11564] Afternoon Session

The Court: You may resume, Mr. Lane.

Mr. Lane: Thank you very much, your Honor. I will be quite brief.

I was saying when we adjourned for luncheon that the cartel companies themselves fixed the definition of a qualified participant to come into the consortium up to 5 per cent. It may very well be that that was one of the things of which Cities Service was informed before relinquishing its opportunity to go ahead in Iran, so that in that sense the cartel companies were definitely admitting or holding out the other companies that might participate in the consortium.

Then, too, as we show in our papers, the umpire in this situation was Price, Waterhouse, which, as you know, is probably the largest accounting firm in the world, I guess, and does work for these big companies, so that it didn't exactly seem to us to be an arm's-length situation.

I think that to put this in perspective, I would say this: that what we have here, by contrast to what the defendant has up until this argument called the touchstone de-[fol. 11565] cision, namely, the Griffin decision, is something based upon a long period of close working relations toward the realization of an ambitious plan by the plaintiff and Cities Service, in contrast with the racial, religious and other prejudices upon which Mr. Griffin based his claim that summary judgment could not be taken against him.

What we have here is an unexplained dramatic shift from what appeared to be almost a fait accompli to what appeared to be a lack of any interest even to discuss the matter, followed by a period of almost two years' secrecy as to what really did happen.

Now, I am as unwilling as the next to dedicate my life to a forlorn cause. I am as interested as anyone in this room to ascertain precisely what did happen, and I am perfectly confident that there is a valid basis for according the plaintiff that right and opportunity, and I am per-

fectly certain that if at the present stage of development of the procedure in this case summary judgment were to be granted in favor of Cities Service, finally terminating plaintiff's claim against Cities Service, since the statute of limitations has run on that claim now, reversal in the Court of Appeals would be inevitable, and that we would [fol. 11566] then find that we had been engaged in a time-consuming, expensive undertaking for no purpose.

We cannot tell until the plaintiff has had some opportunity to inquire of Mr. Hill and Mr. Jones and other Cities Service personnel whether these documents that are presented on the Kuwait contract are all relevant documents or whether they are supplemented by collateral agreements or understandings or memoranda, and even if we had not a pre-selected group of documents but had them all, still I submit that in this circuit, in any event, we would still be entitled to a trial to ascertain the reasons behind those documents for the course of conduct which those documents indicate.

Now, if we had all of those documents, it is possible that we would have a different concept of the case now, but it does not seem fair to me to be told, as I was this morning, that upon the presentation of a selected group, if my client was an honorable man and a man of integrity, he would have withdrawn his claim. If he had all the papers, perhaps he might have withdrawn his claim—I do not speak for him in that regard, because he has not had all the papers—but I say for my own part that when [fol. 11567] as much time and effort have been put into something of this magnitude, I would not advise him to withdraw his claim upon presentation of that slim group of papers.

Judge Rifkind suggested that he was for a rule, that he would prefer to be governed by a rule and that my statement at page 15 that, rule or no rule, his motion should be denied, was not according to his way of doing things.

Of course, if you would look at page 14 of my brief, which immediately precedes the top of page 15, where I

said, rule or no rule, you will realize that I was talking about Loew's, Inc. v. Bays, at which the same thing happened as happened here, namely, that the plaintiff in an antitrust case was denied the right to take any depositions or conduct any discovery at all, and yet the motion for summary judgment was granted against him and reversed because of Rule 56(f), which in that kind of situation indicates that the Court has discretion to continue the motion pending the discovery by the plaintiff.

What I meant when I said, rule or no rule, was simply that even if there were no Rule 56(f), when the plaintiff comes into court, as this plaintiff does, and has been put [fol. 11568] through what this plaintiff has been put through, elementary principles of common justice would indicate that before he is thrown out of court he should have an opportunity to inquire, and I did not mean by my reference to what he had to endure simply that he had had to endure examination before trial; of course, he has had to do that; I am not complaining about that; and it is oversimplifying it again for Judge Rifkind to suggest that all this plaintiff has had to endure at the hands of Cities Service is four and a half days of examination before trial. What this plaintiff endured at the hands of Cities Service was that he was led into a trip to Iran; he was promised in effect an incredibly valuable contract, and then he was in a sense ejected from the Cities Service family of which he had been assured he was a member, with no explanation whatever from that day to this, on the predicate that there was a cartel, an international oil cartel, and that Cities Service made common cause with him up to the point where it shifted its allegiance and interest to the other side of this cartel struggle, and that these facts cannot be denied—we say that at the very [fol. 11569] least, before his claim is terminated against him, he should have the opportunity to inquire.

We think that of all the circumstances, that result is most clearly indicated in the Second Circuit. Therefore, our

suggestion to the Court, in conclusion, is that the motion either be denied outright as impossibly premature or that it be continued pending the giving of an opportunity to the plaintiff under Rule 56(f) to conduct his own discovery proceedings, and we urge upon the Court the importance of the latter alternative, which brings in the fact that the principal actors in this controversy are all men of advanced years, who will not be available if we have to wait another two years before we examine them.

REBUTTAL BY MR. RIFKIND

Mr. Rifkind: What I shall say will not be organized very well, because I have just jotted an occasional word to serve as a reminder of some things that Mr. Lane said with respect to which I wanted to comment, so I hope your Honor will bear with me.

I suppose I should apologize for what one judge of this court once called the lusty practice of the law, but I happen to be devoted to the lusty practice. I like to make my [fol. 11570] points with the enthusiasm which I actually have for the proposition that I am asserting. I did not think I was making a jury speech. If Mr. Lane will do me the honor sometime to sit in when I address a jury, he will then will see what I do to a jury. It is an entirely different method of address. But I really did not think that I trespassed.

I think that the propositions I asserted were the kind that were very properly addressed to the Court and not to a jury.

I should like to call your Honor's attention to one or two quotations. The first I shall read from Banco de Espana v. Federal Reserve Bank, Judge Leibell's decision, in these words:

> "This Court will not base its decision on these motions"—

these were motions for summary judgment—

"on suspicions, but on facts. Rule 56(c) of the Federal Rules of Civil Procedure requires the assistance of a genuine issue as to a material fact on which to base a denial on defendant's motion for summary judgment. The same is true under Rule 113 of the New York Rules of Civil Practice."

[fol. 11571] And the citation follows.

"In my opinion the suspicions advanced by plaintiff's counsel serve to create only a feigned issue."

I think that that is a good text with which to open my remarks with respect to what Mr. Lane has said. He has again advanced some feigned issue—"maybe, perhaps, I don't know."

Then I call your attention to a quotation by Judge Weinfeld, much more recently, in Morgan v. Sylvester, reported in 125 Fed. Supp. at page 380, where he says:

"Fully recognizing that conspiracies are rarely proved by direct evidence, nonetheless some evidence, however slight, must be offered of a fact from which a reasonably-minded person can draw an inference of the alleged conspiracy . . . . Rules 56(e) specifically states that affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify in the matter stated therein. The absence of fact is not cured by vituperation and [fol. 11572] the indiscriminate use of opprobrious adjective. Neither is it cured by mere assertions unaccompanied by facts which would be admissible in evidence upon a trial."

It goes on:

"A trial is required only when there are genuine issues of fact, and the opposing party is not entitled to have the motion denied on the mere hope that at the

> trial he will be able to discredit the movant's evidence. He must at the hearing be able to point out to the Court something indicating the existence of a triable issue of material fact",

and so on.

Now, your Honor has heard my good friend's argument. I have not heard him call attention to any issue of fact. In a couple of places he says, "I allege so and so and it has not been denied."

Into that kind of a trap I usually do not allow myself to be enticed. My burden on a summary judgment is to avoid issues, to show that on the acquiesced-in facts, on the unquestioned facts, there is no triable issue.

So it may be there are some trifling allegations made in [fol. 11573] the complaint which I have not taken the trouble to deny because they are not germane to the question of whether the defendant Cities Service is entitled to judgment as a matter of law.

Now, one or two things that I want to comment on.

First, some of my good colleagues representing other defendants have suggested to me that possibly something I have said may have given rise to the suggestion that the original members of the consortium were excluding anybody by some arrangement. I don't know that to be the fact. I do not say that it is the fact. I don't know what the fact is, and I assume it was not the fact, because the whole thing was done under the bright light of supervision of the State Department and the Department of Justice. But if anything I said might lead somebody to such a conclusion, I would like to withdraw any such suggestion.

You heard a question put: Why did we buy oil from Kuwait? Your Honor, that looks like a very pertinent question, but you might as well ask me why did we buy oil from Oklahoma, or why do we buy oil down in Pennsylvania or some other places?

The fact of the matter—and I don't think Mr. Lane will [fol. 11574] contradict me on this—is that the Cities Service system, the whole system of companies which constitute the Cities Service family produce only somewhere about 40 per cent or a little more—45 per cent of its market requirements. Inevitably it must buy the other 55 per cent from whatever sources it can find. It buys oil every day of the week, day in and day out, and the record so shows. Mr. Waldron knew it. He said they were buying better than half their oil, at page 6166 of the record. So to ask why we were buying oil from Kuwait—we were buying because we needed oil to satisfy our requirements. We bought oil all over, all over the United States and other parts of the world.

But if the theory is that the ability to ask this question, why did they buy oil from Kuwait, entitles the plaintiff to prosecute this action, then it seems to me, your Honor, that we have been unwarrantedly selected for this honorable role of being the defendant in this case, because the same should be true of every other marketer of gasoline, of oil products in the United States, each and every one of whom buys oil every day, and is he going to say that each one of [fol. 11575] them is a putative defendant who has to come in here and justify his conduct, either because he did or did not want to do business with Mr. Waldron?

There were times, your Honor, when I was not sure whether Mr. Lane was trying to justify his complaint in this antitrust action or whether he was abandoning that course on formulating in his mind, consciously or unconsciously, a cause of action for a finder's fee or a broker's fee or a commission.

He spoke of and he read to you in rather well phrased language about how Mr. Waldron had knocked at Cities Service's door, and thereafter had introduced them to the greatest opportunity of a century. Those are the words that usually are to be found in a complaint in which the plaintiff is seeking commissions as a finder or a promoter.

Now, I assume that if Mr. Lane had been able to frame a complaint which would entitled his client to recover under that theory of the law, he would have done so. I assume that he didn't because he couldn't. But whether he could or he couldn't, this is not the complaint that he framed in this action.

The last suggestion I heard disturbed me somewhat. I didn't think that I would hear that suggestion. I heard [fol. 11576] Mr. Lane say that what he meant when he used the language that the plaintiff had endured much at our hands—he meant that we led him into a trip to Iran. We led him into a trip to Iran?

In this blue book, your Honor, Exhibit 1 on our motion for summary judgment, you will find out whether we led him into a trip to Iran or whether he was knocking at our door, seeking to sell his wares.

The first wares that he offered to us for sale, according to his deposition, was an invitation from Iran to come to Iran, the price tag on which was $1,000,000 for the invitation. And when that was laughed out of court, some other arrangement was made.

But it could not be that the plaintiff has a contract claim against us, because he isn't suing on that. But if you are under any illusion that we took advantage of poor Mr. Waldron, I don't think that Mr. Lane will disagree with me when I tell you that he has been paid not only for his expenses but for any time he put in in behalf of Cities Service.

Mr. Lane tried to make a point that until the Gulf contract for Kuwait oil was actually executed, there was not a binding arrangement between Cities Service and Gulf. [fol. 11577] Your Honor will recall that great emphasis was placed by Mr. Lane on that aspect of his argument, and I am willing to assume now that although there was an offer and an acceptance long before, that the intention of the parties was to memorialize their agreement in some written form, and that that did not occur until the end of

that year or January of 1953, and that Gulf could not have sued Cities Service for breach of contract if they had not taken the oil or that Cities Service could not have sued Gulf for not delivering the oil before that date.

But, your Honor, we are not here passing upon an action by Cities Service against Gulf for breach of contract nor by Gulf against Cities Service for breach of contract. We must not lose track of the context in which that transaction is here used. The context in which it is tendered here by the plaintiff is that in August of 1952 or September of 1952, when, as he says, Iran was laid in the palm of our hand, we abandoned Iran and went off and bought Kuwait oil, and unless I am incapable of completely, utterly understanding the English language, the impression I have and the impression that I had from his complaint was that the Kuwait transaction was used as the means of dissuading [fol. 11578] Cities Service from going forward with Iran. In that context, it matters little whether the instrument was actually executed or not executed. As soon as it appears that as a matter of fact negotiations had been intensively carried out for a long time prior thereto and that the parties had reached a state of mind wherein they agreed with respect to the terms and that all that remained was to memorialize the agreement, that notwithstanding the fact that until such memorialization occurred there was no binding contract, it can no longer be asserted that that is a fact from which you can infer the existence of the Kuwait offer as a bribe to buy off a possible customer.

But even if there were, what is there to suggest that it was the instrument for the arrangement of a conspiracy to boycott the plaintiff or to boycott Iranian oil?

Mr. Lane said something to you about how serious the conversations were between Mr. Waldron and Cities Service and says that there was considerable discussion as to the compensation that Waldron would receive in the event that an arrangement was worked out whereby Cities Serv-

[fol. 11579] ice would undertake the management of the entire Iranian operation.

I will not take time to comment on it, your Honor, but if some time your Honor has an idle hour or a half hour and wants to read something that is quite amusing, I suggest that page 6168 of this deposition will reveal to you just how serious Mr. Waldron's testimony was with respect to that discussion.

Now, at a number of places, Mr. Lane said that our papers don't negate this or that or some other thing. Your Honor, of course my papers don't negate. If I were to come in here to negate, I wouldn't be here on a motion for summary judgment.

The question is not whether I negate anything or my papers negate anything. The question is: Has the plaintiff got the little shred of evidence which the courts say is necessary to entitle him to be here when his complaint is challenged by a motion for summary judgment as powerfully founded as the one that we have made here this morning?

I heard him say that nobody denies the validity of the contract between Waldron and the Iranian Government. Well, I can look around this room and see some very distinguished counsel who, if afforded the opportunity, would [fol. 11580] rise and in a loud clamor tell you that they challenge the validity of that contract.

But I am not here for that purpose. For the purpose of my motion it matters little. It matters not at all whether the contract be valid or invalid. I am not now trying to invite that issue into the case, because assuming validity, the plaintiff hasn't got a case.

When you add it all up, the total of what you heard Mr. Lane say was, "We don't know, maybe, maybe they used it to force themselves into the consortium; maybe in 1952 in August Mr. Jones said, 'Maybe if I will go through and take over this entire Iranian operation, unless you promise me that in the fall of 1954 you are going to get the Depart-

ment of Justice to approve a consortium, and you go to the National Security Council to establish that there is great national security interest involved so as to justify doing so, and you are going to get the President of the United States to invoke those powers that he has in order to make that possible, and you are going to get all those people that are in this Middle East to pick Price, Waterhouse & Company, and you are going to establish standards [fol. 11581] that will make it possible for us to get in, and you are going to so arrange it, so that when we are all through we are going to get 45/100ths of one per cent of the pie which is now lying spread out on the table before us' "—my mind recoils from that kind of exposition.

Perhaps my mind is not attuned to the subtleties of inference of which the plaintiff is capable, but I must say that I am unable to see the nexus, logically or rationally, between one event and the other, but even if there were a logical nexus, the answer is, as the courts have said, it is not enough for us to raise a suspicious question: "What have you got to show, written or oral, in your possession which justified you in serving this complaint which would warrant a court in permitting you to exercise the licenses of examination that are afforded to a legitimate plaintiff?"

Two years of secrecy—you heard the reference to that. I suppose what Mr. Lane meant to refer to was that the agreement was executed for Kuwait oil in January of 1953 and hadn't come to the attention of the general public until the end of 1954.

[fol. 11582] Well, it so happens that the contract by its terms did not require any performance until late in 1954. As I indicated to your Honor, a fleet of tankers had to be built in the interval. All kinds of arrangements had to be made. Why this private contract was newsworthy or why anyone should reveal it or not reveal it I don't know. There is no rule that says that Cities Service Company has to publicize every time it makes a contract for the purpose of oil. Not even the Securities and Exchange Commission

has any such provision. I don't know of anything—I know we have a truth in Securities Act, but I did not know that we have a disclosure in oil transactions act on the books.

Just why should Cities Service or Gulf have made this contract public until such time as it was a matter of general interest, and that was when it went into effect and oil began to arrive from Kuwait for the refinery in Philadelphia?

The last argument is Mr. Lane's personal avowal to you. He says, "Your Honor, I am certain that if you let me dig in here I will find something."

Well, there used to be a rule—I guess there is still a rule—that lawyers should not vouch for their witnesses. [fol. 11583] I don't think a lawyer ought to vouch for his unseen documentary material, because he does not know. What he is saying is, "Give me this fishing license. Didn't I serve a complaint? And I need a fishing license." And I say, "You are not entitled to a fishing license until you have legitimate complaint and a complaint which will not withstand the disclosure of a genuine issue of a material fact is not the kind of a complaint which pays off a dividend in the form of a fishing license.

Finally, the last argument was, I suppose, ad hominem or in terrorem: Beware. If you grant this motion, it is going to get reversed.

Well, your Honor, I haven't observed that kind of timidity in this court before, and I do not expect to see it now, and I am sure that it doesn't make any difference. As one judge of this court once said, "The Circuit Court does what it thinks is right, and the district judges do what they think is right", only it was put in more pungent language than I feel warranted in putting upon this record.

The fact of the matter is that of course I would not come into this court and ask you to grant an order which I had [fol. 11584] reason to believe would not stand the scrutiny of the Court of Appeals. I think that the decisions of the Court of Appeals warrant—indeed encourage—I can't say

"command," because, as you know, denials of motions of summary judgment are not appealable, so we don't know what the Court would have done in some of the cases in which summary judgment was denied.

But when I see that in the last five antitrust cases in which motions for summary judgment were granted, the Court of Appeals affirmed in three out of them, then I don't think that this in terrorem argument plays any part, and I shall not address myself to it.

Now, your Honor, instead of wandering off longer, I think I should better attend to the questions that you indicated you wanted to address to counsel.

REBUTTAL BY MR. LANE

Mr. Lane: May I reply to that very briefly, your Honor?

The Court: Yes.

Mr. Lane: Of course, no in terrorem argument was meant at all. I was simply trying to explain in a very brief compass what I thought the attitude of this circuit was. I am perfectly aware of your Honor's familiarity with the [fol. 11585] policy of the Second Circuit in that regard, because your Honor is the author of three or four decisions and published opinions which enunciated it.

At the outset of his rebuttal, Judge Rifkind made a point again of the alleged fact that the parties, Cities Service and Gulf, were in agreement long before Waldron appeared on the scene, and he said—I made a note—that there had been an offer and acceptance.

If your Honor would look at document 26, page 2, Article 17, there is a letter to Mr. Bartlett of Gulf from Mr. Hill of Cities Service in which he said:

> "This article still provides for a charge of 5 cents a barrel for loading into tank cars, truck transport or truck wagons, and 2 cents a barrel for loading into barges. These amounts are not agreeable to Cities Service."

It then says that this has to be negotiated out.

When you are dealing with millions and millions of barrels, a penny difference in this contract would be $920,000.

When, in document 27, a summary is drawn up by the [fol. 11586] Cities Service people, it is entitled "Summary of Proposed Gulf Contract." So that I say to your Honor again, there was no contract. There was no offer and acceptance. There was nothing binding at the time when Waldron secured the invitation to Jones to go to Iran and when Jones went there and spent a month in his inspections and negotiations.

Judge Rifkind has suggested that merely to discuss the purchase of oil with Waldron was to invite suit at Waldron's hands.

Of course, nothing could be further from the fact. Waldron offered the oil all over the United States for two or three years, and he has sued only the cartel companies and Cities Service, with which he had the unique relationship which I have described.

I, too, think it would be helpful to answer such questions as your Honor may have.

The Court: As long as you are on your feet, Mr. Lane:

Judge Rifkind said that the plaintiff has been paid for his services and time. Does that fact appear in the record before me?

Mr. Lane: You should pursue that fact in the record that we have here.

[fol. 11587] I will answer that in just a moment. I don't mean to encumber the Court with the whole examination before trial and 2000 documents. All I mean by bringing it here is that it can be available to your Honor. We will either leave it here or we will take it to our office and bring it back if you want to see some particular part of it.

Now, to answer your question directly, Waldron expressed a great disappointment—

The Court: Now, look: Without any preliminaries, can you answer the question of whether or not the plaintiff has been paid for his services and time?

Mr. Lane: No. The plaintiff has been paid a small sum of money which he estimated was his out-of-pocket, that is, his loss from his business and whatnot, for undertaking what he did at the time and the expenses that he put into it. It is a trivial amount of money compared to what we are talking about here, and it is not the basis for Judge Rifkind's motion here at all. It is not alluded to in his papers.

We are not talking about a release or anything like that.

[fol. 11588]

COLLOQUY BETWEEN THE COURT AND MR. RIFKIND

The Court: Judge Rifkind, you stated that the plaintiff has been paid for his services and time. Are those facts —assuming that they are the facts—in the record before me?

Mr. Rifkind: I think that they are disclosed in his own deposition, page 6347 et seq.

I think Mr. Lane will agree with me that he received $19,000, he and his associates, in addition to his expenses, and that it was designed, as he said in writing, to pay for his loss of time.

The Court: When was that paid?

Mr. Rifkind: Spring of 1953.

He also stated in his letter in which he accepted this payment that he had no other claims against Cities Service.

I am not asserting a release for this claim, your Honor, but this is the fact.

The Court: In any event, Cities Service recognized that he rendered services?

Mr. Rifkind: No question about it.

The Court: Was there an itemized bill?

Mr. Rifkind: No, sir. His expenses were itemized but not his services other than the amount that he stated represented his loss of time by being kept away from his [fol. 11589] food brokerage business.

The Court: There is no dispute about the fact that he had contacts with Cities Service?

Mr. Rifkind: None whatsoever. There is no question, as I indicated in my argument, that he met the Cities Service people, that he procured the invitation from the Iranian Prime Minister, that he accompanied Mr. Jones, or at least traveled to Iran at the same time as Mr. Jones did, and that Mr. Jones did speak to the Iranian officials and inspected the plants and operations. No question about it.

The Court: For purposes of the argument and for that purpose only, what are the unquestioned facts that you regard as not germane and that have been summarized by Mr. Lane?

Mr. Rifkind: First of all, you can take the complaint, and as far as Cities Service is concerned, everything right down to Kuwait certainly is not germane—

The Court: I just want to know what types are not in dispute so far as this motion is concerned and that you are willing to admit arguendo.

Mr. Rifkind: I don't know what Mr. Lane wants me to [fol. 11590] admit.

The Court: He said it is not disputed that Waldron had a contract.

Mr. Rifkind: Whether or not he had a contract I say is immaterial for the purposes of this suit, and therefore you can treat it either way as far as I am concerned.

The Court: All right.

Mr. Lane alleges that there was a complete turnabout of 180 degrees.

Mr. Rifkind: I don't know what that means. If you read his—excuse me.

The Court: I understood by that that he meant that whereas before a certain event took place, which Mr. Lane interprets or translates to mean joining the alleged conspiracy, Cities Service displayed keen interest in the Iranian deal, and that after certain events or a certain event took place, they were not interested.

Mr. Rifkind: Your Honor, let me give you what I understand the situation is, as alleged in the complaint.

The Court: What I am concerned with is the historic events, without editorial comment.

[fol. 11591] Mr. Rifkind: That is right.

Mr. Jones did go to Iran. He inspected the installations. Obviously he wouldn't have gone there if he weren't interested.

He stated in his release that he went there to try and find a solution for the Iranian oil problem. It is the news clipping that has been put in evidence by Mr. Lane. I accept it.

He went there for that purpose. He came out, and he said that he found a dry hole. In any event, he did not pursue that transaction at that time, although I think Mr. Lane will agree with me that he continued his interest in the Iranian problem for a very much longer period than that.

Now, why—

The Court: You say he continued his interest in the Iranian problem?

Mr. Rifkind: Oh yes.

The Court: Could you sharpen the focus on that a little? Did he continue his interest in the deal that was then under discussion, if there was any deal?

Mr. Rifkind: The complaint does not allege that the Iranian Government offered him any deal.

[fol. 11592] The Court: That is what I am trying to find out.

Mr. Rifkind: You read the complaint, your Honor. Look at page 18, and I will be happy to focus your attention on it. That is paragraph 6. This is of the utmost importance. It says:

> "Prior to 1952, Cities Service had been unable to obtain a source of crude oil in the Middle East because of the aforementioned allocation agreements."

Now, I didn't deny that when Mr. Lane called attention to it, although the fact is that Gulf was peddling its oil all over—

The Court: The facts that you have referred to, Judge Rifkind: Are they admitted, arguendo?

Mr. Rifkind: I say it is immaterial to us, so if you say, arguendo, it is admitted, that is another way of putting it.

The Court: I would like to know what facts are admitted for the purpose of the motion and only for that purpose. I realize that you don't want to be sucked into an argument over facts, because that would defeat the whole purpose of the motion.

[fol. 11593] Mr. Rifkind: All I say is that I am indifferent whether prior to 1952 Cities Service had or had not been able to obtain oil.

The Court: That is why I want to ask you, so that just as you psychoanalyzed Judge Frank, I can psychoanalyze myself.

Mr. Lane's argument, as I understand it, boils down to the proposition that there was an historic sequence of events, which events are not in dispute for the purposes of this motion, and that those events, including any changes in enthusiasm or position by Cities Service, by and of themselves are of such a nature as a concatenation of occurrences that according to the laws of human experience they constitute a chain of evidentiary circumstances sufficient, says Mr. Lane, to justify a court giving him the privilege of further inquiry.

Now, that is the headnote to his argument.

Mr. Rifkind: That is what I understood it to be, and that is the one that I have taken issue with.

The Court: All right. Therefore, this gets down to a question of logic in the sense that you say that no rational [fol. 11594] mind would draw the inference which Mr. Lane seeks to infer.

Mr. Rifkind: All right. The historic sequence is—

The Court: Just a minute. I listened to you all morning, and I want you to listen to me for ten seconds.

Mr. Rifkind: Yes. It will do me much more good.

The Court: Mr. Lane said in substance that even though he has nothing in writing or nothing orally which constitutes evidence in the sense of Wigmore as distinguished from Winchell, there is a series of events which per se have an internal logic sufficient at least to indicate that what he is talking about is not the mere figment of a psychopathic, imaginative individual.

Is that right, Mr. Lane?

Mr. Lane: Perfect, your Honor.

The Court: Have I over-simplified it, or is that the substance of what you have said?

Mr. Lane: You have simply stated it five times better than I could. It is simply perfectly my position.

[fol. 11595] The Court: All right. Now, Judge Rifkind said—

Mr. Rifkind: Can I address myself to that?

The Court: Go right ahead.

Mr. Rifkind: Taking the headnote as you have indicated it literally, Mr. Lane did specify in his complaint a series of events which he said spelled out this historic sequence from which an inference might be drawn. What is that series of events? No. 1, Cities Service exhibited intense interest in Iranian oil when Mr. Waldron called their attention thereto. That is item 1.

Item 2, Cities Service officials went to Iran and inspected the properties.

No. 3, at that very time that Mr. Jones was inspecting the properties in Iran, Gulf and Anglo-Iranian combined to make an offer to Cities Service of a vast supply of oil at a very cheap price.

[fol. 11596] The Court: It is at that point that you translate that and characterize that as a buy-off.

Mr. Rifkind: Those are the historical events that he mentions in his complaint.

The Court: All right. At that point, bearing in mind that you were in the midst of your narration, temporarily

interrupted, Mr. Lane says that the facts are ambivalent, that whereas you seek to characterize it as a buy-off—

Mr. Rifkind: I don't understand what you—

The Court: He says, again without committing himself, that it is also equally consistent with the theory that they were using in negotiations as a leverage to get a piece of the other deal.

Mr. Rifkind: Let us look at that—

The Court: And the complaint, ingeniously or ingenuously, does not refer to that characterization.

Mr. Rifkind: I will take it either way, your Honor.

So the historical event to which he refers is, one, the interest in and trip to Iran.

Two, an offer or a request, either way. If it is leverage, it is because Jones is asking Gulf; if it is an offer, Gulf is [fol. 11597] asking Jones to take Kuwait oil, either as the price of staying away from Iran or as the threat of staying away from Iran, but the historical events—

The Court: Are those your theories, Mr. Lane? You are keeping the door open because you say you don't want to commit yourself yet.

Mr. Lane: That is right.

Mr. Rifkind: I will take it either way, because what he alleges is this historic event, and, lastly, that as part of the res gestae, so to speak, there was an arrangement whereby Cities Service became a member of the Consortium. That was his series of historic events, as he laid them out in his complaint and as he laid them out in his deposition.

If I destroy that series of historic events, than the historic events do not happen.

The Court: What you claim is this: that this series of historic events that Mr. Lane has described, if that is all there was to it possibly one might view that with suspicion.

You claim you have gone forward and, as the movant under Rule 56 have sustained the burden in effect of eliminating every rational hypothesis of guilt?

Mr. Rifkind: Let me demonstrate that.

[fol. 11598] The Court: Is that what you have done?

Mr. Rifkind: Yes. I say—

The Court: And stated in traditional legal jargon, what you have undertaken to do is to eliminate by documentary and other record facts every rational, reasonable hypothesis of conspiracy.

Mr. Rifkind: You have done it exactly as I would hope to be able to say it.

The Court: That is what you have demonstrated?

Mr. Rifkind: That is right, because I have done this, your Honor. I have demonstrated by uncontradictable evidence that there could not have been this Kuwait transaction at that time used either as bait or as threat, and being that there couldn't be this Consortium transaction, either as bait or as threat—

The Court: What you say is this: that the historical facts up to a point objectively considered, as stated by Mr. Lane—those facts are artificial, because they are taken out of the context of realities which you have sought to demonstrate?

Mr. Rifkind: Your Honor, what is the new set of historical events that appears? All that appears is that Mr. Waldron approached Cities Service, said that he had an interest in Iranian oil. Cities Service says, "We are not [fol. 11599] interested in Iranian oil as such, but we would be interested in taking over the management or having a part in taking over the management of the entire Iranian enterprise in toto."

They went there, looked at it and didn't make a deal.

I say that that is all there is. You can't on that say that you've got the right to be suspicious, because why wasn't there any deal when—and I get back to that "when"—I get back to that, your Honor: please look at page 18 of the complaint. There is no allegation that the Iran people or the Iranian Government or the Iranian Oil Company tendered any kind of a proposal to Cities Service.

The Court: Judge Rifkind, you are not in the government case, because Cities Service is not a defendant there; is that right?

Mr. Rifkind: That is correct.

The Court: But perhaps you know the answer to this question:

Does the complaint in the government case allege as facts in pursuance of the conspiracy a boycott of Iranian oil after the nationalization?

Mr. Rifkind: It does not, your Honor. The entire gov-[fol. 11600] ernment complaint is in this complaint.

The Court: I know. I just want this on the record.

Mr. Rifkind: I am correct, am I not, that it does not so allege?

The Court: Does the complaint in the government case allege as a fact in pursuance of the conspiracy the Consortium of 1954?

Mr. Rifkind: It does not, your Honor.

The Court: Judge Rifkind, one other question on the law:

What case in this circuit do you regard as your strongest authority, as demonstrating a retreat from Arnstein?

Mr. Rifkind: Let us see. Morgan v. Sylvester was affirmed by the Court of Appeals. That is the most recent. That is Judge Weinfeld's decision.

The Court: Specifically what I have in mind is this: when you say that there has been a retreat from the Arnstein doctrine, are you referring to any statement by the Court of Appeals?

Mr. Rifkind: In so many words? No.

The Court: Either as a holding or a dictum that indicates that there is a lessening of what Chief Judge Clark [fol. 11601] once called the general insistence upon full-dress trials as distinguished from trial by affidavits.

Mr. Rifkind: I do not find and have not found such an explicit withdrawal from Arnstein v. Porter, but the behavior of the Court of Appeals is very definitely that way.

I should call your attention, your Honor, to another case I mentioned, Morgan v. Sylvester, and previously I had mentioned the Banco de Espana case. That did not go to the Court of Appeals. But in Schneider v. McKesson & Robbins, decided in the Second Circuit in 1958, they cited this case for the proposition that mere suspicion cannot serve to create a genuine issue of fact.

The Court: All right. Now, gentlemen—

Mr. Rifkind: In Griffin v. Griffin, of course, and the decision by Mr. Justice Black—I regard that as authoritative.

The Court: The Second Circuit policy has been the subject of comment the nature of which I shall not characterize, by those learned in the law.

Mr. Rifkind: I know. The junior courts.

The Court: And regardless of the fact of the dictum of [fol. 11602] the unnamed judge who said the District Courts do what they want and the Circuit Court of Appeals does what it wants, the fact of life is that we have to observe what the Court of Appeals regards as controlling doctrine, and while we sometimes don't know which way the breeze is blowing, we try to gauge the direction of the wind.

Mr. Rifkind: Of course. I would not question that for a minute, your Honor, and I would not suggest to you that you should rebel against the decisions of the Court of Appeals, but I say to your Honor that in behavior the Court of Appeals is more and more falling into line with the general doctrine of summary judgment which prevails all over the United States, and the decisions which I have called attention to are the direction signs which have been posted as demonstrating that that has occurred.

The Court: Do you think they constitute a pattern?

Mr. Rifkind: I think that they constitute—

The Court: A meaningful pattern?

Mr. Rifkind: —a meaningful pattern to indicate that summary judgment is a very useful and salutary device to [fol. 11603] be employed wherever a genuine issue is not made out.

The Court: With that doctrine it would be impossible to argue. Mr. Lane would agree with that axiomatic proposition.

Mr. Lane: I was going to suggest to your Honor that in all this discussion what you must bear in mind is that we are not talking about summary judgment under Rule 56 after the plaintiff has had an opportunity to conduct his discovery. What we are talking about here is whether there is enough in the historical concatenation of events here to entitle this plaintiff to have his discovery.

The Court: That comes to another point that I was holding off until we cleared the way.

Mr. Rifkind: If you limit the historic events to those that I indicated, as I think is the only way to do here, all you have is that here is a salesman who has been disappointed in the fact that his customer won't buy, and that, I submit, is not a basis, a ground from which you can lay a foundation for an examination before trial in an anti-trust case.

The Court: Let me ask you one or two final questions before I turn to Mr. Lane.

Was the newspaper clipping that the plaintiff says he [fol. 11604] read produced at his deposition?

Mr. Lane: No.

Mr. Rifkind: I am confused about that. I don't think it ever was.

COLLOQUY BETWEEN THE COURT AND MR. LANE

The Court: Mr. Lane, what is the newspaper clipping that the plaintiff read that all this talk has been about?

Mr. Lane: Exhibit D, which is attached to the opposing affidavit.

The Court: That is the paper you are talking about?

Mr. Lane: That is the paper I was talking about.

Mr. Rifkind: I did not know that that was the paper he was talking about.

The Court: I just wanted to clarify the record for future use.

The newspaper clipping which the plaintiff read—

Mr. Lane: That is right. That broke the news to him while he was dealing with Cities Service, they were also dealing with Gulf, was Exhibit D attached to the moving affidavit—rather, to the opposing affidavit.

[fol. 11605] The Court: I want to ask you this, Mr. Lane:

You say in paragraph 1 of your opposing affidavit:

"I am acquainted with the facts of the case to the extent that they are known to the plaintiff."

Do you see that statement?

Mr. Lane: Yes.

The Court: Isn't that somewhat ambiguous?

Mr. Lane: I say I believe I am acquainted with the facts to the extent that they are known to the plaintiff.

The Court: Wait a minute. To what extent are the facts known to the plaintiff? What you have done there is, you have wrapped your statement around statement which is an unknown quantity. I don't know whether you did that purposely or otherwise.

Mr. Lane: This is not a cute way of saying something—

The Court: Are you saying that you don't know any more than the plaintiff knows?

Mr. Lane: Yes. I am saying that the same door that is closed in the plaintiff's face is closed in my face, that I have discussed the case with him for untold hours, that [fol. 11606] I have gone through his papers and exhibits. I have also gone through such sources as the congressional hearings—

The Court: I know, but that does not help me.

Mr. Lane: I want to help you. I want to tell you what the basis of my information is.

The Court: Everything you have done has not yielded you anything, apparently?

Mr. Lane: Oh, no. It has yielded a great deal, your Honor.

The Court: You tell me what facts and issues you have unearthed or have by the process of research or otherwise to show that you had something more than suspicion and speculation.

Mr. Lane: What we have here is a cartel—

The Court: Suppose you just go ahead, take your time and just enumerate one, two, three, four, in headline form, what facts you are relying on.

Mr. Lane: All right.

Headline 1: going 'way back to 1928, there was organized and continued from year to year and by agreement after agreement a cartel and monopoly in Middle Eastern oil.

[fol. 11607] Headline 2—

The Court: Up to that point, Cities Service is not in it?

Mr. Lane: Not in it.

The Court: All right. When you get to Cities Service, you will let me know.

Mr. Lane: Of course.

The Court: All right.

Mr. Lane: Headline No. 2: Cities Service was short of crude oil reserves and was looking for crude oil in the Middle East. As a matter of fact, now that I think of it, one of the reasons I believe why Cities Service was not able to get into the Middle East is because it was one of the first if not the first company to deal with Mexican oil after Mexican oil was nationalized as Iranian oil was nationalized.

The Court: Is that in the papers?

Mr. Lane: No. That is not in the papers.

The Court: Don't refer to anything that is not in the papers.

Mr. Lane: Just forget that, if you will, your Honor.

Cities Service needed crude oil. Cities Service was short from 100,000 to 150,000 barrels of crude a day. Cities [fol. 11608] Service was interested in relieving that shortage by a long term contract involving Middle East oil. It

wanted to get into the Middle East, and it had been excluded.

That is alleged in the complaint, and it is not denied, and assume we may take it as established.

Headline No. 4, if that is where we are: Waldron had a valid contract for 15,000,000 tons of oil at very favorable prices, prices so favorable that I don't suppose they could have been matched, except for the crisis in which Iran then found herself.

This would have gone a long way to relieving the shortage which Cities Service was experiencing.

Waldron took that contract to Cities Service, and Cities Service, we believe, saw in this an opportunity far greater than was simply provided by Waldron's 15,000,000-ton, five-year contract.

Cities Service wanted a longer contract and more oil than that.

The Court: That is all in the record?

Mr. Lane: That is all in the record.

The Court: Go ahead. What is the next?

Mr. Lane: It isn't that Cities Service simply said, "We are not interested in your oil." What Cities Service said [fol. 11609] was, "We are interested in the whole Iranian oil industry. Can you get us in the door?"

The Court: Who said that?

Mr. Lane: Burl S. Watson.

The Court: That is in the record?

Mr. Lane: Yes.

The Court: Go ahead.

Mr. Lane: Mr. Lowe, vice president of the company—Watson is not president of the company. "Can you get it?" Waldron said, "Yes, I can." They said, "Are you so confident that you can get it that you will go over at your own expense and risk and try for it?"

Waldron said, "Certainly I will." And they said, "Do it." And they sat down and drafted—

The Court: You say "they". Whom are you referring to?

Mr. Lane: Watson and Lowe.

The Court: That is in the record in the form of plaintiff's deposition?

Mr. Lane: Yes. That is the only thing that is in the record.

The Court: All right. Go ahead.

[fol. 11610] Mr. Lane: So they drafted up the agreement, the invitation as they wanted it. It is in the record. They said, "We must keep this away from the knowledge of anyone else. It is confidential, and I will go and get it." And then, at the last minute, they said, "We are kind of ashamed of making you go at your own expense. We will pay you, but you understand that we cannot pay you by direct check. It's got to be arranged for indirect payment. So you put in your expense account to Mr. Carter, and he will pay you."

At the same time, when Waldron was saying to them, "Well, what's in this for me? I am not going over just for my expenses", they said, "Don't worry about that. You are one of the Cities Service family, and you will get one to two cents a barrel, depending upon what kind of an agreement we finally make. But we can't put that in writing, No. 1, because we don't know what agreement we are going to make, and, if it became known to the trade that we are going against the cartels"—

The Court: What did you just say?

Mr. Lane: "If we put this in writing with you now, we would be put in the position where it could become known that we were opposing 'the big boys' " meaning the five big American majors that made up the American participa-[fol. 11611] tion in the Middle East cartel.

Next headline: Waldron went to Iran, and he got the invitation, which so far has not been put in evidence but which is now Exhibit B attached to the opposing affidavit, signed by the Prime Minister, and Waldron says that that is the same as the invitation which he was requested to get for Mr. Jones, only it had been translated by Iranians into

French, and we translated it back into English for this purpose.

Waldron then came back to the United States and brought this invitation in to the Cities Service office.

Now, bearing in mind it had to be very secret, he went through a devious route of giving it to Mr. Shaw, who is an elderly officer there who had been years before a friend of Mr. Waldron's father, saying to Mr. Shaw, "I just came back from Iran, and I bear an envelope here for Mr. Jones. I don't know Mr. Jones. Can I leave it with you? Will you see that Mr. Jones gets it?"

Mr. Shaw then took it up to the 20th floor, or whatever it is, where they had the head office and gave it to Mr. Watson, who then opened it, and there was great consternation that such an invitation as this had come from the [fol. 11612] Prime Minister of Iran to the president of the company, and everybody pretended that that was something which was quite spontaneous on the part of the Prime Minister of Iran, and a call was put in—this is on the record—to Mr. Jones, who was out at the Bohemian Grove in San Francisco, acquainting him with it, and his response immediately was, "Did Cap Reiber have anything to do with that?" And Waldron said, "I don't even know Cap Reiber. Who is Cap Reiber?" And then Mr. Shaw, the old gentleman, said "Jerry, I have known your father for years, and I want you to be on the level with us. Did Cap Reiber have anything to do with this?" And Waldron said, "I give you my word. I never had anything to do with him."

But by inference—I confess that is all—it shows that Jones and Cities Service had been trying for years to get an invitation through Cap Reiber and had failed, and Waldron had got it, and they wanted to be sure that it was not through Cap Reiber.

What I am trying to emphasize in this is that this was a very serious business in which Cities Service was tremendously interested.

Jones then said to Waldron on the phone that he had [fol. 11613] done a wonderful job, that he and Nelson were to go back to Denver and wait until Jones had had his inoculations and his people had had their inoculations and gotten their passports and everything to prepare to go, and they would get together in New York to go again, and they did just that, Waldron and Nelson and Carter going over first to get the accommodations for Mr. Jones appropriate to the importance of the trip, and by that time Waldron said to Jones, "What about the threats that have been made by Anglo-Iranian?"

You realize that in this record, too, there are letters from Sullivan & Cromwell to Mr. Waldron and to Mr. Nelson, I think also to his other two associates, warning them not to deal with this oil, that this was Anglo-Iranian's oil and that any deal with it would result in their prosecution.

Then there were publications in the paper by Anglo-Iranian saying, "Don't touch this oil." And in fact, Anglo-Iranian was tying up at that time a small Italian tanker which had had the temerity to go in and pick up a load of oil, and there was a lawsuit pending in Aden.

When Waldron asked Jones about this, Jones replied, "I'm not afraid of Willy Frazer. We will make them take [fol. 11614] this, and if we can come to terms with the Government of Iran, they will have to come to terms with us." And so, at this point, Waldron had the backing of probably the most powerful independent oil company in the United States.

The Court: Just a minute. How close did Cities Service come to actually making a deal, according to the record?

Mr. Lane: Well, we can't say that according to the record, but we can—according to the newspaper clipping—

The Court: No, Mr. Lane. According to the record before me. You understand that I am confined to the four corners of the papers before me and the exhibits. That is what I meant by the record.

Now, according to the record before me, how close did Cities Service come to making a deal?

Mr. Lane: I will show you what is on the record—

The Court: You tell me. You have lived with this case for some time. You don't have to refer to papers.

Mr. Lane: You can look at Exhibit C in which Jones talks to the press before leaving on the 19th of September, [fol. 11615] and he says, "My purpose in coming here was to reactivate the oil industry. That is why the Prime Minister asked me"—

The Court: That is why he went there. Was an offer made?

Mr. Lane: And it says, "I have also made a preliminary report to the Prime Minister, and when I get back to New York, after a week I shall make a further report." We have never seen any of those reports, so we don't know what is in them.

The Court: Was an offer made by Iran or by Cities Service?

Mr. Lane: We cannot go that far. All we know is that Iran was desperate at that time—

The Court: I know, but I am trying to find out something. You don't know whether or not Iran made an offer or Cities Service made an offer?

[fol. 11616] The Court: All you know is that he came, he saw and he said he is going to report.

Mr. Lane: That's right, but see it in the frame of reference—

The Court: Look, I am seeing it in the frame.

Mr. Lane: All right.

The Court: I just want to know what the facts are.

Mr. Lane: He came, he saw, he had the opportunity, he was hailed for having come and indicated his willingness to do it, and then stopped.

The Court: When you say there was a 180-degree turnabout, will you give me your before-and-after description showing me the 180-degree turn other than the fact that there was enthusiasm before and indifference later?

Mr. Lane: I can date it. That is all I can do. I can say that when Waldron left Iran, Jones' mood was, if the

Anglo-Iranian Oil Company doesn't like it, we will pour it down their throats. I can say that after Waldron left Iran and went to Paris, the Jones party went to Kuwait. Then when the Jones party then came to Paris, they said [fol. 11617] there is billions in this but we may have struck a dry hole.

The Court: Is that when the conspiracy was joined by Cities Service, according to you?

Mr. Lane: In point of time according to us that is it.

Then let me take it a step further. Waldron said, "You mean we have this difficulty about transportation?"

Jones said, "Yes."

Waldron then said, "I will go back to New York ahead of you and I may be able to surprise you about that transportation."

He came here, talked to the Lemos Bros., Greek shipping interests, and was led to believe that with a long-term contract with a company as strong an independent as Cities Service, the tankers would be no problem. And then when he went down to the Cities Service—

The Court: According to you, Cities Service was not in a conspiracy yet.

Mr. Lane: Yes, it was. According to me, Cities Service came into this conspiracy—the indication of it is—at the [fol. 11618] time when Waldron and Jones parted company in Iran.

The Court: What evidence have you got or clues or leads or hearsay or anything other than speculation?

Mr. Lane: Simply the inescapable fact—

The Court: Mr. Lane, we all know that when you start a case there may be gossip, clues, leads, good hearsay and so forth. You tell me, other than speculation and suspicion, what you have in the way of information, hearsay, clues or leads, and you take your time and tabulate it.

Mr. Lane: Obviously I don't characterize it as speculation and suspicion. What I say is they went to this point together as opponents of the cartel, and when they reached

this point Cities Service made a 180-degree turn and from that time on was in with the cartel and opposed to Waldron.

The Court: Is that a circumstance per se which you say is pregnant with meaning?

Mr. Lane: That's right.

The Court: And that is your case?

Mr. Lane: That's right.

The Court: I just want to be sure that I understand. [fol. 11619] That is your case so far as Cities Service is concerned?

Mr. Lane: Let me give you this additional evidence to substantiate it.

The Court: We will come to that. Up to that point all you have, in addition to the historical backdrop that you have given me, is the change in attitude of Mr. Jones?

Mr. Lane: That's right.

The Court: And you say that change in attitude, by analogy to the doctrine of res ipsa loquitur, speaks for itself, whatever that means?

Mr. Lane: That's right, should be explained.

The Court: That is your theory up to that point.

Mr. Lane: Yes.

The Court: Now go ahead and give me the additional evidence.

Mr. Lane: All right. We add to that that after Waldron talked to the Lemos Bros. here in New York City and went down to the Cities Service head office to announce that tankers would be available, the answer to him was: "You have no business to meddle in the transportation because [fol. 11620] you have upset the whole charter market by what you have done and, besides, Cities Service is not interested."

The Court: Who said this to whom?

Mr. Lane: This is either Watson or Lowe, I don't know which, of the offices at Cities Service, saying to Waldron, "Cities Service has no interest in Iranian oil, and we are going to get Carter back from Paris to take charge of you, so to speak."

The Court: And you say that statement constitutes evidence.

Mr. Lane: I say that coupled with all the rest of it it certainly does.

The Court: All the rest of it is what you have narrated?

Mr. Lane: That's right, and I say that it is heightened by the fact that Waldron was never told at that time anything about Cities Service having made instead a long-term contract with Gulf, not a word was said, no explanation.

The Court: Then you claim that the two material factors that you rely on are, one, the change in the attitude or position vis-a-vis a deal to be negotiated with Iran—

Mr. Lane: Yes.

[fol. 11621] The Court: —and, two, the non-disclosure—

Mr. Lane: That's right.

The Court: —by Cities Service to the plaintiff as to what was going on with Gulf.

Mr. Lane: That's right, the secrecy with which it was attended.

The Court: You call non-disclosure secrecy. I want to be sure we are talking about the same thing.

Mr. Lane: We are calling it the same thing. A man who has been taken in as a member of the family, who is going to have the fairest treatment and wonderful compensation, was suddenly excluded from the family with no explanation offered.

The Court: And that is the gist or the substance of what you are relying on for the purposes of getting discovery.

Mr. Lane: Yes. Then we say from that time on, as you can see, Cities Service was persona grata with the members of the cartel and Cities Service was one of the dozen companies in the United States that was trying to qualify to bid.

The Court: Now I want to ask you this, Mr. Lane: You [fol. 11622] say that the terms of the proposed Kuwait contract became progressively more favorable?

Mr. Lane: Yes.

The Court: Could you specify what you mean by that by referring to the record?

Mr. Lane: Yes.

The Court: Because Judge Rifkind takes sharp issue with you.

Mr. Lane: If you would make a note to look later, your Honor—

The Court: All of this is being taken down by the reporter.

Mr. Lane: Of course, of course. One thing that I was referring to was—

The Court: I want this in detail. You start in some place and give me the facts and figures or paragraphs or whatever you have there.

Mr. Lane: I will give you just one which is enough—

The Court: Don't give me one. Give me everything you have on that, and I will give you all the time you need to present it.

Mr. Lane: I am not sure I can give you all I have on it [fol. 11623] because the contract which was finally signed in January, 1953, is quite a different document in form from the earlier drafts which were exchanged between the parties.

The Court: You tell me now whatever you know now to demonstrate that there was a progressive improvement in the terms offered to Cities Service.

Mr. Lane: I would call your attention to the fact that on October 17, 1952, which is a month after the events we have been discussing, Mr. Hill, who signed the moving affidavit for the defendant in this case, wrote a letter to Mr. Bartlett, vice president of Gulf Oil Corporation, in which, on page 2, paragraph 4, referring to Article 17, he said that the proposed charge of five cents a barrel for loading the products at the Philadelphia refinery was unacceptable to Cities Service, and I call your Honor's atten-

tion again to the fact that a penny a barrel made a difference of $920,000.

Then, if you would go to the final contract which is document 28, you will find in it a paragraph which fixes that price I think at $2 a barrel.

The Court: I will tell you what you do. In your reply [fol. 11624] memorandum will you devote a separate section to detailing—I think you had better put it in affidavit form so that it is part of the record; briefs are not part of the record. But put it in an affidavit and set forth chapter and verse of what facts you rely on to demonstrate the terms of the contract were made progressively more favorable, and then, Mr. Lane, will you show the chronological relationship between the alleged improvements and the plaintiff's activities. In other words, you claim that there was a concurrence or parallel action here, that the improvement in the terms was designed to accomplish some ulterior purpose; is that correct?

Mr. Lane: What I am saying in substance is that Cities Service could join the cartel and participate in the fruits of the Middle East or it could fight the cartel and take for itself the Iranian oil industry.

The Court: You will demonstrate that in an affidavit.

Mr. Lane: Well, I will try.

The Court: All right.

Now I come to something that I think has not been dis- [fol. 11625] cussed at all to any great extent, at least, on this argument. That is the distinction between subdivision (e) and (f) of Rule 56. Doesn't Rule 56(f) require an affidavit by a party, not the attorney?

Mr. Lane: No, your Honor.

The Court: Look at the rule.

Mr. Lane: I beg your pardon. It does. It says right in it that it requires such an affidavit, but the decided cases say that where the only thing that the affiant could do was to say, as I have said in our affidavit, that the evidence is in the hands of the defendants, it serves no purpose and will not be required, and we have in this circuit—

The Court: I know, but you are referring to cases that deal with subdivision (e).

Mr. Lane: I don't think so. I think I am talking about Subin v. Goldsmith and your Honor's own decision in Austin Theatre v. Warner Bros. Pictures to which I refer at page 2 of my affidavit.

The Court: Isn't there a distinction between (e) and (f)?

Mr. Lane: Yes.

The Court: Subdivision (e) requires a statement under [fol. 11626] oath.

Mr. Lane: By persons having knowledge—

The Court: Just a minute—of facts as would be admissible in evidence, and obviously where a party does not have facts admissible in evidence there the cases say that under the circumstances the attorney may submit an affidavit. In fact, you don't even need an affidavit if the only issue is the question of good faith or motive or intent of the other side.

But now subdivision (f), on the other hand, does not call for facts that would be admissible in evidence. It calls for the statement of reasons. Subdivision (f) calls for a statement of reasons, not a statement of evidence. And the statement must be made by the party.

Mr. Lane: My authority is Moore. I will cover that more carefully in the memorandum, if your Honor evidently wants it covered more carefully. My understanding of it was that where all the affiant could say was that he would have to get this branch of his evidence from the other side—

The Court: I know, but you have to give reasons. The word "reasons" I am quoting. You have got to give rea- [fol. 11627] sons. Reason must mean some logical, rational statement explaining your position. You cannot say I want it because I want it because I want it. That is not a reason. You have to give a reason.

Mr. Lane: We thought we had done it. But, in any event, could we cover that in the memorandum also?

The Court: Well, you had better put it in an affidavit. It should be the affidavit of the party.

Mr. Lane: All right. I will be glad to do that.

The Court: And I think in fairness to you, in order to avoid having to reargue this on a new set of papers and having everybody come back again, you ought to get an affidavit from your client—

Mr. Lane: I will be glad to.

The Court: —in which, for purposes of saving stenographic labor, unless Judge Rifkind objects, all he has to say is that he read a copy of your affidavit and that he incorporates every fact set forth in there to the extent that it is set forth in his affidavit so that all you need is [fol. 11628] one paragraph.

Mr. Lane: I would have done it if I had realized it was necessary, and I won't say that the plaintiff—

The Court: Is that all right pro forma, as far as you are concerned?

Mr. Rifkind: Certainly.

The Court: But that is not a major part of your case. All right.

Mr. Lane: It will take me probably four or five days to get it because he is in Phoenix.

The Court: All right. Suppose Judge Rifkind has eliminated every reasonable hypothesis of a conspiracy on the part of his client. Would you say that you are still entitled to discovery?

Mr. Lane: No, I don't think so.

The Court: You say he hasn't eliminated every reasonable hypothesis.

Mr. Lane: He hasn't eliminated it, and I say for that that you may in such cases as this and in derivative stockholder suits have a perfectly valid explanation on paper which turns out to be quite different when you have the actors on the stand and examine them. So I don't see how [fol. 11629] we are brought to this—

The Court: What reasons are you going to set forth over and beyond what you have already told me? Have you given me all the reasons?

Mr. Lane: I think so, but I don't want to foreclose myself from giving more if they occur to me. You realize that we—

The Court: Just a minute. You say that the defendants have submitted to the Court a pre-selected group of documents.

Mr. Lane: That's right.

The Court: What do you mean by that?

Mr. Lane: It is simply that they have given the Court what they chose to give, and I don't know what additional documents there are. I don't know either how this would look from the Gulf side of it. Maybe it is quite different. You can't tell.

The Court: Have you any clue or lead or rumor to indicate that your suspicion has any basis other than the mere speculation that there are other documents of a material character?

Mr. Lane: No, but I don't think I should be put in that position.

[fol. 11630] The Court: I am asking you if you have a clue or lead or gossip or rumor.

Mr. Lane: No, I don't have it.

The Court: You have nothing but just the thought that that might be.

Mr. Lane: That's right. I agree with you.

The Court: You have nothing but the mere thought, not based upon any specific clue, lead, gossip, rumor or hearsay.

Mr. Lane: I have nothing, I don't even have their say-so, that these are all the pertinent documents. I don't even have that. All I have is—

The Court: That can be supplied if it is the fact.

Mr. Lane: I would like to know if it is the fact. There must be a world of correspondence in addition to this.

There must be many memoranda of how this thing developed. I don't know whether there were collateral agreements to this. I have no idea. All I know is that they tell me that these documents are enough to answer my complaint.

It seems to me that these documents show the very con- [fol. 11631] verse of what they say they do. It seems to me these documents show that they were not in agreement with Gulf at the time when they went on this Iranian venture, and it seems to me that if they had been in agreement with Gulf they never would have gone to Iran.

The Court: All right.

Now, Mr. Lane, let us assume for the sake of argument that the Court might permit your client to have some kind of an examination before trial of Cities Service.

Mr. Lane: Yes.

The Court: Do you recognize that in order to prove that Cities Service was a member of a conspiracy that you would have to prove membership by acts and declarations of Cities Service itself?

Mr. Lane: I would have to prove it by their acts and declarations—

The Court: Not the acts and declarations of other alleged co-conspirators, because they are not vicariously binding on Cities Service unless and until you first show that Cities Service is a member of the conspiracy; is that right?

Mr. Lane: That's right. But that doesn't mean that— [fol. 11632] The Court: Just a minute. So that therefore, before you get into a full-dress, general, dragnet discovery, assuming any discovery is granted, your examination would be confined or should be confined to an examination of Cities Service to establish by its acts and declarations that it is a member of an alleged conspiracy; is that correct?

Mr. Lane: I wouldn't think so.

The Court: You tell me what you think of that.

Mr. Lane: I would assume that I can prove that conspiracy by anybody who participated in it and had knowledge of it and could tell me about it or produce a document proving it, whether it came from Cities Service's file or from some other source. I would assume that I could not prove it from the act of Gulf in doing something else, or Anglo-Iranian in doing something else, but if I could get Sir William Frazer, just for example, to say: Yes, I had a talk with Jones and we agreed on this and that—

The Court: Then you would be proving admissions or statements by Cities Service.

Mr. Lane: That's right. But with witnesses in the other [fol. 11633] oil companies and not in Cities Service.

The Court: Then it is your position that there is no way of carving out or narrowing the scope of an examination of Cities Service for purposes of subdivision (f), that you would have to get—

Mr. Lane: I think the obvious place to begin is with Cities Service, with the personnel with whom all these dealings were had, and whether we need to go farther than that I don't know, and it would depend very much on what turned up there, but I remind you again that I am not interested in dedicating my life to this lawsuit. I want to do it as efficiently as I can. I think there is enough in this to warrant having that opportunity. I wouldn't rest easily until I had it. The place to begin is with W. Alton Jones.

The Court: Has the deposition of the plaintiff been completed?

Mr. Lane: Yes.

The Court: By everybody?

Mr. Lane: Yes.

COLLOQUY BETWEEN THE COURT AND COUNSEL

Mr. Dean: Not the ones mentioned in your order, your Honor.

[fol. 11634] Mr. Lane: I beg your pardon. I thought it had been.

Mr. Dean: There has been the utmost delay in this matter. The plaintiff has asked for adjournment after adjournment because of alleged illness. Mr. Lane has asked for a number of adjournments for personal reasons. Mr. Nelson has asked us, because he was unemployed, to examine him in the evening, although he has not kept his schedule for the examinations in the evening. And although he is not presently employed, he did not notify us of that fact after he made the agreement. And we have not yet examined Mr. Bentley.

I might say that the delay is in no way due to the fault of the defendants. Every delay has been at the request of the plaintiff.

Mr. Lane: I thought your Honor was asking whether the plaintiff's examination had been concluded. I understood that it was concluded. There may be a tag end here or two, but at present his principal associate, Nelson, is being examined. After that Bentley is to be examined. There are 262 days—

The Court: The examination in behalf of the defendant [fol. 11635] has not been completed yet pursuant to that order?

Mr. Lane: No, that's right.

Mr. Rifkind: Your Honor, in so far as Mr. Lane says that he wants to examine with respect to the contacts he says were had with officials of Cities Service, we have taken Mr. Waldron's testimony, and certainly he doesn't expect that the deefndant's testimony is going to be more favorable to him than his own testimony. He is the one who had those contacts, and we have his deposition as to every conversation and contact he says he had with these people at Cities Service.

The Court: What he means, as I understand it, is that if he examines the defendants he may be able to develop some evidence supporting his theory of the case. That is what Mr. Lane is driving at.

Mr. Rifkind: Let me make a few comments on a few separate matters that he mentioned.

First, this story of the 180-degree turn and that something happened in Iran, and how close did he get to a deal, your Honor asked. This exhibit which is annexed to Mr. [fol. 11636] Lane's affidavit says that Mr. Jones denied having made any agreement or commitment to do anything or having come to any final decision and stated that he had discussed the purchase of oil only as a remote possibility.

I did not offer that. Mr. Lane did. But as far as Mr. Waldron himself is concerned, of course he testified at page 6247:

"Q. I assume that from what you have just said that at no time did Mr. Jones come to you and say or say in your presence that he had a deal with the Iranians.

"A. No.

"Q. Nor did any other Cities Service person say to you that a deal had been effectuated between Cities Service people and Iranian.

"A. No.

"Q. Nor did any Iranian person, that is, an official of the Iranian Government, or of the National Iranian Oil Corporation, ever say to you that a deal had been made with Cities Service.

"A. No.

"Q. Did any Iranian official or any official of NIOC"—that is the National Iranian Oil Corporation—"while you [fol. 11637] were there and in the presence of any Cities Service personnel ever tell you that a specific proposal had been made by the Iranians to Cities Service?

"A. No."

And so on and vice versa, too.

There was a reference that something happened when Mr. Jones allegedly left Iran and went to Kuwait. I think I did not misunderstand Mr. Lane that he said something like that. Two propositions on that.

First of all, Kuwait is a great refinery. It is located in the sheikdom of Kuwait in the Middle East. But the prin-

cipal officials of Gulf are not located at that refinery. I think your Honor will almost take judicial notice that the principal officials of Gulf with whom contracts are made are located in Pittsburgh.

The Court: I don't know that. I tried tanker cases involving Kuwait Oil and so forth, but my judicial knowledge of where the Gulf officials are located is not within my ken.

Mr. Rifkind: The documents themselves that are in evidence show that of course the officials of this great [fol. 11638] corporation are located at their headquarters in Pittsburgh and not in a desert oil field out in Kuwait.

The Court: They have some air conditioned buildings there, don't they?

Mr. Rifkind: So I hear.

The Court: It has been written up in Fortune Magazine. It sounds like a paradise.

Mr. Rifkind: Please take my word for it, it is not the place where the president of Gulf goes to spend his holidays. There are more attractive places around the perimeters of the earth and on its seas than the hot little place known as Kuwait.

But, be that as it may, this is an interesting commentary upon this whole transaction. It is true that Mr. Jones was invited to go to Kuwait, but he never got there.

There was some reference to—

The Court: Is that in the record?

Mr. Rifkind: I don't know whether it is or not, but, if necessary, I will put in a supplemental affidavit to cover that. It never occurred to me that anybody would claim that he had.

[fol. 11639] There was some notion that the deal was improved with respect to the loading charge, and Mr. Lane made reference to that. I think I ought to give you just a sentence or two on that. It is all in the record, in the papers that you have before you.

The Court: Why don't you cover this in your supplemental memorandum. Because in the final analysis, Judge,

I have to go through every single piece of paper that is referred to here. I have tried to read as much as I could during the recesses of trials of other cases, but that is not entirely satisfactory, and while I won't have the idle hour or half hour suggested by you, we will make the necessary time. So that in the interests of saving time—

Mr. Rifkind: It will take one sentence and I think perhaps Mr. Lane will abandon this line.

The Court: Go ahead, but I doubt that.

Mr. Rifkind: Before Waldron there was no loading charge. On October 17th Gulf suggested a five-cent loading charge, and thereafter it was settled at a four-cent loading charge. That was the improvement in the deal.

[fol. 11640]

STATEMENT BY THE COURT

The Court: Now, gentlemen, I would like to call to both of your attentions the following, and solicit your comments:

Mr. Lane may be in the position that a prospective plaintiff is sometimes in when he seeks to obtain an examination before trial for the purpose of framing a complaint. Under the Federal Rules a person who thinks he has a claim may, under Rule 27(a), obtain an examination before trial for the purpose of framing a complaint. Query: Whether, having framed a complaint, a plaintiff may then seek to do that which he should have done before he served the complaint. That is the first question.

By way of elaboration, a person may well feel that he has a grievance but may not be in possession of evidence sufficient to allege the plain, concise statement required by the rules, in which case, before he serves the complaint, and starts a lawsuit by filing the complaint, he may get an examination before trial. Query, and I am restating the same question: Whether, having served the complaint, he may then proceed, after he starts the litigation, to do that which he should have done before he served the complaint.

[fol. 11641] Second question: Under Rule 27(a) the contents of a petition are set forth where you seek to examine another person for the purpose of framing a complaint, and it is a mandatory provision of Rule 27 that you must set forth "the facts which he desires to establish by the proposed testimony * * * and the substance of the testimony which he expects to elicit from each (persons he expects will be adverse parties and persons to be examined)."

It may well be that the rule which applies in order to permit a person to obtain a pre-complaint examination before trial, which requires you to set forth the facts and the substance of testimony, also applies no less where you have a post-complaint examination before trial, and that if the plaintiff is in the position of the petitioner, under Rule 27 are the standards less or more liberal?

These may be diversionary questions which lead to a blind alley, I don't know, but they are suggestions that I throw out for more mature consideration by counsel who are concerned with this.

Is there anybody in the courtroom who, though not having filed a notice of appearance for purposes of this motion, [fol. 11642] desires to be heard on or off the record? And I am addressing other attorneys.

STATEMENT BY MR. DEAN

Mr. Dean: As counsel for Standard Oil of New Jersey, your Honor, I would merely like to call to your Honor's attention that pursuant to your order of February 13, 1958, in which you set forth the times of examinations of the plaintiff Mr. Waldron and his co-partners Bentley and Nelson; we have diligently tried to finish with that examination, and, as I said earlier, the requests for delay come entirely from Mr. Waldron, either because of the state of his health or because of certain matters which Mr. Lane wished to engage in.

Mr. Nelson has been a particularly difficult witness to examine because he has stated over and over again that he has deliberately and intentionally put his entire recollection with respect to this matter out of his mind and that he has deliberately tried to erase it from his memory.

The Court: Who represents him?

Mr. Dean: Mr. Lane. Even the simplest questions take many hours to elicit an answer to, and in order to accommodate Mr. Nelson, because he was trying to get employ-
[fol. 11643] ment, we agreed to examine him in the evenings, but I am sorry to say that he has not been too cooperative in that arrangement; and we have not yet been able to examine Mr. Bentley because we have not as yet been able to finish the examination of Mr. Nelson.

There are also a few matters which, as is stated on the record, we have to examine Mr. Waldron on because when we were examining him he asked that we defer a certain portion of his examination.

I would merely like to say, while certain assumptions have naturally been made here for the purposes of this motion, I am sure your Honor is aware that there was an action brought by the United States Government in the spring of 1953 which is now pending before Judge Cashin.

The Court: What is the status of that?

Mr. Dean: The status of that is that the defendants have answered very voluminous interrogatories, and presently we are complying with an order of Judge Cashin to go into certain foreign countries and to produce documents from those foreign countries and we have to make a report on that to Judge Cashin this spring. The actual report is in
[fol. 11644] the fall, but we have got to sit down and tell Judge Cashin the status of it before the spring term.

A good many statements have been made here about this Consortium. I think there is a document in evidence that the State Department specifically requested Mr. Waldron not to go to Iran and specifically warned him that the relationship between the United States Government and Iran was very critical.

The Court: Is that in the record here?

Mr. Dean: That is in the record.

The Court: Does anybody know the exhibit number?

Mr. Dean: Yes, I can give you the exhibit number.

Mr. Rifkind: That is not in my deposition but it is in the general deposition.

The Court: Is it something that is before me?

Mr. Rifkind: Yes, he has made the entire record part of the material available.

The Court: Mr. Lane, pointing to the left here, you have some eight volumes and batches of papers. What does that represent?

Mr. Lane: That is the transcript of the depositions to [fol. 11645] date, and additionally we have the exhibits.

The Court: All right. Mr. Dean.

Mr. Dean: I would like to show you this, your Honor. This is Standard Oil of New Jersey Exhibit 3 marked in connection with the examination of Mr. Waldron. As you will note, on that document—

The Court: Do you want to put this in the record here so it would be easier to locate?

Mr. Dean: Yes.

The Court: Do you want to mark this or read it in?

Mr. Dean: I will be very glad to read it in.

The Court: Whichever course will be easier.

Mr. Dean: This is a letter dated February 4, 1952, addressed to the Hon. Edwin C. Johnson, Chairman, Committee on Interstate and Foreign Commerce, United States Senate, signed by Jack K. McFall, Assistant Secretary, Department of State, Washington.

"My dear Senator Johnson:

"The receipt is acknowledged of your communication of [fol. 11646] January 30, 1952, enclosing a letter from your constitutent, Mr. Gerald B. Waldron, requesting clarification of the attitude of the Department of State regarding the sale of Iranian oil in the United States at this time.

"In the Department's opinion, the British-Iranian oil controversy is basically a matter for negotiation between the two governments directly concerned. Because of our vital interest in this matter the United States Government continues to use its influence toward finding a solution of this difficult problem. In line therewith, we welcome the initiative of the International Bank for Reconstruction and Development which is currently trying to work out a plan for settlement of the controversy, and are extending every appropriate assistance in such efforts as the bank is making in this regard.

"The Department is of the opinion that the injection of any non-official individual, group or organization into this dispute might prejudice the ability of the parties concerned in reaching a satisfactory solution. Accordingly, the Department believes that non-official entities should refrain [fol. 11647] from getting involved in the dispute.

"Mr. Waldron's thoughtfulness in wishing to learn the attitude of the Department in this connection is very much appreciated. His letter is herewith returned.

"Sincerely yours, for the Secretary of State:

"Jack K. McFall, Assistant Secretary."

The Court: And the date of that letter?

Mr. Dean: The date is February 4, 1952.

Prior to this time Henry Grady in 1951 was the American Ambassador there and he had been doing his best to bring about a settlement of this dispute. Then President Truman sent Averell Harriman there in the summer of 1952 in an effort to settle this dispute, and Ambassador Loy Henderson was our Ambassador there and he advised Mr. Waldron, when Mr. Waldron went there, not to get involved in this matter. This whole question was a matter that involved the personal attention of President Eisenhower and the National Security Council, and it was due to the intervention of the President and the National Secu-

rity Council that this Consortium was worked out at the request of our government in September of 1954.

[fol. 11648] The Court: That appears in the record before me?

Mr. Dean: Yes. I merely wanted to say, your Honor, that if anything comes up in this particular motion which might involve in any way a reconsideration of your Honor's order of February 13, 1958, or in giving any right of examination to the plaintiff, we should think that that ought to be set down as a separate matter.

The Court: I tell you now that that order stands. That order stands. The existing order stands. I am not reconsidering that. The only question now is whether or not, under Rule 56(f), there is sufficient justification for adjourning Judge Rifkind's motion pending such time, whenever that occurs, that the plaintiff conducts a discovery. That is one of the questions before me.

Mr. Rifkind: Your Honor, the comment that I should like to make, if I may—

The Court: Judge Rifkind, before you get started, the statements of fact made by Mr. Dean, are they cited in the record any place in your papers? If not, could you submit—

[fol. 11649] Mr. Rifkind: Not in our papers.

The Court: Could you submit a memorandum annotating in the sense of pagination the statements made by Mr. Dean?

Mr. Rifkind: We shall be glad to do that.

The Court: So that it has a factual basis in the record before me.

Mr. Rifkind: We shall be very glad to do that by supplemental memorandum. And the statement I want to add, your Honor, really will not throw light upon this question that you are considering, but considering that we are dealing with personalities of considerable standing in the community and corporations of great magnitude, I think your Honor should know, and I don't want the public to misun-

derstand, that when Mr. Jones went to Iran he first consulted with the President of the United States and with the Secretary of State and it was at their joint solicitation that he proceeded to accept the invitation he had received from the Prime Minister of Persia.

It is not in this record, but I didn't want, in the light of [fol. 11650] what Mr. Dean said, to have the impression go that Mr. Jones went to Iran in opposition to the wishes of our State Department. Such is not the fact. And we will submit a memorandum to prove that for the historical validity of the situation.

The Court: All right. Mr. Dean, you have something else you want to add?

Mr. Dean: Mr. Steyer wanted me to put on the record, your Honor, that there have been some short adjournments for mutual convenience of counsel and some of them at defense counsel's request, but all the major ones have been made at Mr. Waldron's request or at Mr. Waldron's counsel's request.

Thank you, your Honor.

The Court: Mr. Pollack.

STATEMENT BY MR. POLLACK

Mr. Pollack: Your Honor has mentioned that other counsel have not filed notice of appearance on this motion, and it may be that some of the facts or alleged facts are intertwined with the balance of the case which is before your Honor as a Rule 2 judge. I should like to place on record I am the attorney for the British Petroleum Company in this litigation.

[fol. 11651] The Court: Let me ask you this, Mr. Pollack. Would you prefer to submit an affidavit?

Mr. Pollack: No, I should prefer just to tell you what I have noted down here.

The Court: All right. Go ahead.

Mr. Pollack: British Petroleum was given informal and not direct notice of this motion and is therefore here solely

as a spectator and no assertion that I know of is made hereon directly or indirectly as against British Petroleum. I would like to have that clearly appear on the record since no legal notice to the contrary was served on us by the plaintiff. British Petroleum does not by its presence as a spectator wish to be understood as accepting the competitive statements of alleged fact, if any, or the competitive conclusions thereon, or even the assumptions arguendo of the moving or of the opposing party, nor is it necessary for British Petroleum at this time to select and affirm those which might be true.

Moreover, British Petroleum assumes and asks that any findings of fact by the Court on this motion be made only on the assumption that they are rigorously limited [fol. 11652] and applied solely to Cities Service and to Waldron. Such underlying facts as might be said to appertain to British Petroleum will be presented by British Petroleum when its turn comes to deal with any issues that might appear as against it, and nothing on this motion should be deemed to prejudice or be deemed to adversely affect the free presentation of the facts by British Petroleum or the Court's consideration of the issues with British Petroleum.

I therefore ask that any ruling that the Court makes on this motion should expressly reserve out of the ruling at this time any fact or any conclusion which might be said or thought to adversely affect the defendant British Petroleum Company, Ltd.

The Court: All right. The Court on its own motion will apply a similar stipulation with regard to all of the other defendants in the case than Cities Service with the same force and effect as if counsel made the same request that Mr. Pollack has just put on the record.

I grant your request, Mr. Pollack. I grant other counsel's requests.

[fol. 11653] Mr. Lane: Just one brief remark, your Honor.

The Court: Mr. Lane, before you rise, is there anybody else in behalf of any of the other defendants who wants to say anything?

All right, Mr. Lane.

Mr. Lane: I only wanted to point out that the record indicates over and over again that after that letter was written to Senator Johnson the plaintiff, in all that he did with the Iranian matter, kept the CIA informed and that there is nothing which would justify the impression that the plaintiff was a meddler who was reckless of the consequences of what he did vis-a-vis the United States.

Mr. Rifkind: And I certainly don't want to get involved in that issue.

The Court: Well, we will stick to Rule 56.

Mr. Rifkind: May I hand in a little reply brief?

The Court: Is this a promise of things to come or is this it?

Mr. Rifkind: This is as of this moment but, since your Honor has asked some additional questions, there un- [fol. 11654] doubtedly will have to be a supplemental memorandum.

The Court: All right, gentlemen, let's fix some deadlines.

Mr. Lane, Judge Rifkind, can you complete the final submission by Friday of this week?

Mr. Beshar: Can we find out when we get the transcript, your Honor?

The Court: When did you order it for?

Mr. Beshar: Originally we said we did not need it tonight, but we did not realize there would be these additional affidavits required.

The Court: I mention this Friday deadline for a very practical reason. I go into the motion part for two weeks on Monday.

Mr. Rifkind: We will do our best. I mean by that, you know, that we will just perform. Have we any choice?

The Court: How about you, Mr. Lane? You have to have an affidavit from your client.

Mr. Lane: That's right.

The Court: Where is he now? He is in Arizona, according to your papers.

Mr. Beshar: Can you give us a week after Judge Rif- [fol. 11655] kind puts his in?

The Court: No, there will be a simultaneous submission. I will give you an extra week. Make it May 20th for final submission, and, gentlemen, you will understand that I do not want to receive letters.

Mr. Lane: We do not want to write them, Judge.

The Court: Nonetheless, you do. I do not want letters. When the briefs are submitted, that is, that is your final submission, and I don't want a letter-writing marathon because one letter provokes a reply, and then the letters are not part of the record, as much as I like to hear from distinguished counsel. You know what I mean.

Mr. Lane: We know.

Mr. Rifkind: And I only say thank you very much for giving us such a long delay.

The Court: You are more than welcome. It is a pleasure to hear both of you. It is a very challenging case.

We stand in recess.

(Reporter's Certificate to foregoing paper (omitted in printing).

[File endorsement omitted]

[fol. 8351]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—v.—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL COMPANY (NEW JERSEY), THE TEXAS COMPANY, Defendants.

Transcript of Hearing on Motion—New York City, May 3, 1961, 4:50 P.M.

Before: Hon. William B. Herlands, District Judge.

APPEARANCES:

Casey, Lane & Mittendorf, Esqs., Attorneys for Plaintiff; Samuel M. Lane, Esq., and Robert P. Beshar, Esq., of Counsel.

[fol. 8352] Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., and Henry L. O'Brien, Esq., Attorneys for Defendant Cities Service Co.; Simon H. Rifkind, Esq., Edward N. Costikyan, Esq., Arthur B. Frommer, Esq., of Counsel.

Sullivan & Cromwell, Esqs., Attorneys for Defendant Standard Oil Co., (N.J.); Roy H. Steyer, Esq., and Hamilton F. Potter, Esq., of Counsel.

Mr. Rifkind: May it please the Court, we have served returnable for this hour a proposed order to carry into effect what we believe to be the effect of your decision, as

published in the opinion in Waldron versus British Petroleum. May I say that it is a restrictive order. It is a restrictive order because we believe that the opinion warrants the submission of a restrictive order.

Now, I may just want to have this preliminary comment with respect to that. Your Honor is familiar with Rule 11 which, among other things, provides that an attorney's signature to a complaint is a certificate by him, among other things, that to the best of his knowledge, information and belief there is good ground to support that complaint.

I wonder whether, if plaintiff's attorney had signed that complaint with the language of the rule, which is that to the best of his knowledge, information and belief there is good ground to support it by reason of the fact that, as far as Cities Service were concerned, he was to say Cities [fol. 8353] Service is named as a defendant because of suspicion and by reason of a gossamer inference from the mere sequence of events—I wonder whether if he had done that, that complaint, that signature, could have survived a motion to strike, and that complaint could have continued as a complaint, or whether it would have been stricken as sham in accordance with Rule 11.

I do not mean to use this occasion to reargue the motion.

The Court: The motion itself is adjourned.

Mr. Rifkind: Exactly. The motion itself is adjourned, but I say that in the light of the opinion—

The Court: Judge Rifkind, I pondered for weeks on the application of that rule and its thrust on the merits of this matter, and my thoughts were parallel to yours. I will say that I have adjourned—I adjourned the motion, and am permitting the very limited and restricted examination largely as a matter of policy rather than cold reason or logic.

Mr. Rifkind: Very well, then I need not pursue that.

I will say the order limits the proposed examination to two subjects which are the two subjects which the plaintiff specified continuously in his examination before trial as the subjects which prompted him to have the suspicions

which he entertained—namely, the making of the agreement with Gulf Oil Corporation, and the extension to Cities Service of an opportunity to become a member of the Consortium.

We limit the examination to those two items. And since Mr. Hill, an officer of Cities Service, is the officer who was in charge of both transactions we limit the examination to him.

When I do that, your Honor, I do not mean to suggest that if it should appear during the course of Hill's examina-
[fol. 8354] tion that some other witness could throw light on it that would be helpful to the Court, that an application could not properly be made to the Court for such relief, but in the first instance it is our view that Hill has been identified as the man who has conducted both transactions, he is the man that we tender as the person informed of the subject, and we think in the light of the limitations upon the scope and extent of the examination that it would be an appropriate limitation so to circumscribe it, and for that reason we have submitted the order as indicated.

Our good friends, the attorneys for the plaintiff, have submitted a counterorder which, as I read it, says no more than that this matter is adjourned. If that was all there was to it, I don't think we would need an order. We didn't need an order to do that. But I think now, while the matter is fresh in your Honor's mind, fresh in counsels' mind, and while the thing can be, so to speak, crystallized so that it can be dealt with on the basis of an order, I think it would be appropriate to do so at this time, and for that reason I submit the order for your signature.

Mr. Beshar: May it please the Court, my name is Robert Beshar, I am associated with the firm of Casey, Lane & Mittendorf, counsel for the plaintiff.

I wish to explain to the Court Mr. Lane is not here because he has an examination in the Green case, the Martyn Green case, and the doctor being examined there is about to leave the country. He intends no disrespect, and he may in fact manage to get here, but he was unable to adjourn

that examination, which had been scheduled previous to this hearing.

We don't really have too much to say about Judge Rifkind's proposed order. We have submitted our own order which we think—

The Court: Your order is largely a paraphrase of some [fol. 8355] of the thoughts I expressed in the memorandum, but it has no administrative or operating provisions.

Mr. Beshar: Yes, we read your opinion, your Honor, to say that the hearing on the order to circumscribe the plaintiff's discovery would be more appropriate after the defendants had concluded their examination of the plaintiff's associates.

I believe we were led to that conclusion by the second paragraph of your opinion, which reads: "When the commencement of such proceedings shall be deemed to have become timely under the outstanding controlling order of the Court, counsel will be heard as to the nature and scope of proposed depositions, discovery and inspection, and other related pretrial matters."

That is the exact language, you will notice, we have put in our proposed order.

The Court: Why isn't it timely now to get this thing set up?

Mr. Beshar: Well, it is not timely for a variety of reasons, not only on the merits as to Judge Rifkind's proposal as to who shall be examined and as to what topics, but as to the timeliness issue itself, we think only after plaintiff's associates have been examined, and we have all the plaintiff's side of the story in. One of the principal people to be examined is Mr. Carter, a former employee of Cities Service, and the principal liaison between plaintiff and Cities Service. Only when he has been examined will we really know what Cities Service's side is before we actually go about discovering directly on Cities Service.

We respectfully suggest at that time it will be more appropriate to set out the metes and bounds of plaintiff's discovery.

In any case, if you want to go to the merits, as to whom we shall have the right to examine, frankly we find it rather [fol. 8356] novel that in a conspiracy situation the defendant nominates the man who is going to talk about the conspiracy.

Mind you, Waldron, the plaintiff, never once contacted Hill either by word of mouth or in writing. Hill, we are not blind to the fact, your Honor, is a lawyer, and I am sure if he were the only person we could examine on Cities Service, it would be a very, very expeditious examination. The question is whether it would be a fair examination, and we think that in a conspiracy situation the logical people to examine are those with whom plaintiff has dealt.

Now, the record is quite clear, exhaustively clear, that plaintiff has dealt on numerous occasions with Mr. Jones, the head of the company at that time, with Mr. Watson, the present head of the company, with Frame, with Lowe, with Whetsel—

The Court: The fact he dealt with people or spoke with them, does that make them amenable to examination?

Mr. Beshar: We think so. That, perhaps, brings us to the nub of the problem.

The Court: Isn't the purpose of this thing discovery of what the facts are, and the thing to do is to get the man who has the closest contact with the situation?

Mr. Beshar: Good, we accept that, your Honor, and we say this is the nub of it, and we say that Mr. Waldron has testified that that is the nub of it, and certainly the pleadings are: Did or did not Cities Service conspire to frustrate plaintiff's efforts? That is the issue.

Judge Rifkind stated that in his argument. Your Honor has stated it in his questioning of counsel on the argument. It is in the pleadings; and certainly Mr. Waldron's testimony by Judge Rifkind was that while Kuwait and Consortium were the outstanding things he had in mind, he [fol. 8357] did not foreclose himself for a moment that there might be other things which would explain why Cities Service did conspire.

But you can go beyond that, you know. I don't think a plaintiff has to tell why, what was the quid pro quo to induce somebody to join a conspiracy. The inducement might be that Sir William Fraser promised Jones he would put him up for St. Andrews.

The Court: I tell you now in as plain English as I have command of, and in so doing I am reiterating what I said in the memorandum, that I am not going to let the plaintiff in this kind of situation harass Cities Service.

Mr. Beshar: Your Honor, we accept that.

The Court: For the reasons set forth in the memorandum.

Now, this is going to be a circumscribed and restricted examination, and I am not going to let the plaintiff examine as many people as he wants, nor am I going to permit the plaintiff to conduct the kind of examination that ordinarily is permitted under Rule 26 and the related rules.

Mr. Beshar: Your Honor, we certainly accept that, and we do not propose to subject Cities Service to the kind of examination that we have been subjected to. You realize that plaintiff testified a hundred and some-odd days, I think, with Standard Oil of New Jersey alone. We are not about to—

The Court: We are not interested in matching statistics.

Mr. Beshar: No, but we do feel, sir, that it is a complicated case involving a large and complicated matter, and the idea that the only person we will have to examine about this conspiracy is someone with whom plaintiff never dealt, who is a lawyer to boot, and who is to be examined for a period of ten days only, on these two topics alone, we think it is simply not appropriate to the lawsuit involved.

[fol. 8358] The Court: We can determine that.

Mr. Beshar: And you can determine that, of course, as you must, and you will, and the question is whether you do it now or whether you do it at the conclusion of the defendants' examination of the plaintiff.

But this is, I suppose, what I have in mind, your Honor, by submitting my proposed order. In a way Judge Rifkind brings on a whole hearing to limit plaintiff as to his—

The Court: It is obvious to everybody who has read the papers on the motion for summary judgment that he is concerned, and he has good reason to be concerned, because if he were to subject Cities Service and all of its personnel to a roving dragnet, fishing expedition, where the plaintiff has nothing but suspicion, there might be an injustice.

Mr. Beshar: Yes, but we can't—

The Court: And he has good reason to be concerned, and so has the Court.

Mr. Beshar: Of course you realize, your Honor, that our view is that practically all antitrust cases begin on suspicion, and not on very much more.

The Court: Well, generalities don't help us decide cases.

Mr. Beshar: The Government begins, your Honor, more often than not, with a bunch of identical bids—

The Court: But you are not the Government; you are a private plaintiff.

Mr. Beshar: That is right, and we had no chance to discover before we brought the complaint through a Grand Jury the way the Government ordinarily would, or through the FBI and voluntary compliance.

The Court: Unless you give me good and persuasive, cogent reasons I shall sign the order as proposed by Cities Service.

[fol. 8359] Mr. Beshar: Excuse me a moment.

The Court: If it should appear on the examination of Mr. Hill that there are other witnesses who have material and relevant evidence to give, then the Court will at that time take up any application for the examination of such other and further persons.

Mr. Beshar: Fine. As far as—

The Court: And if it should turn out that the examination cannot be completed in ten working days, and by ten working days we mean that examination which is conducted with appropriate diligence and without any attempts of procedural delays of any kind, that they are really ten working days, and that time is inadequate, and it is my judgment you need more time, I will entertain an applica-

tion. I am not attempting to foreclose the plaintiff. This is not an arbitrary, immutable decision.

Mr. Beshar: Would you like to hear, your Honor, my cogent reasons that you asked for as to why I think you should not sign this order?

The Court: Yes, I would.

Mr. Beshar: I think the most compelling one is this: That it is an antitrust case, that plaintiff never once dealt with this man, but rather he dealt with this man's superiors in direct, face-to-face conversation, he traveled with these other men of Cities Service to Iran, that the basic issue in the case is when he got to Iran what turned Jones away from following through. That is our basic theory in this case.

The Court: But his own testimony, his own testimony, plaintiff's own testimony, with regard to all of these matters, does not warrant the examination of these other people at this time.

Mr. Beshar: Your Honor, if the plaintiff, for argument's sake, if you will pursue this with me, if the plaintiff is completely mistaken as to the true rewards that flowed to Cities [fol. 8360] Service for joining the conspiracy, it still does not destroy the fact that that conspiracy would be actionable if it harmed the plaintiff. What the rewards were, what the inducements were, to enter the conspiracy is not part of the essential pleading. That is mere surplusage.

The Court: I understand.

Mr. Beshar: If plaintiff speculates, and he is wrong in that speculation, I still respectfully suggest to your Honor that it would be a mistake to limit plaintiff to examination on those two counts.

The Court: I shall approach—I tell you now, Mr. Beshar, I am approaching this matter with pragmatic caution. I will deal with this in accordance with the dynamics of the situation. Instead of entertaining applications to narrow the examination, which is the ordinary situation, I am looking through the telescope at the other end: I am starting out with a narrow examination and then, as occa-

sion may warrant and considered on the merits in the light of the situation, I will determine whether and to what extent there should be enlargement of the boundaries of examination because I believe, having read the thousands of pages of testimony and exhibits and the briefs in this matter, that the plaintiff at this point has not presented a sufficient basis to justify the ordinary Rule 26 type of examination.

Mr. Beshar: Yes, I can understand if this examination, your Honor, is in response to a motion for summary judgment, and is to enable us simply to assemble enough to satisfy ourselves that we can oppose his motion on the merits, that, therefore, it is not as broad an examination as it would be if we were just taking an ordinary pretrial examination.

The Court: The purpose of this examination, so far as I am concerned, is to enable you, if possible, to get com- [fol. 8361] petent evidence which can eventually be incorporated in an affidavit, or in the form of sworn deposition, sufficient to show there is present a genuine issue of material fact.

Mr. Beshar: Fine. Now, your Honor, if, as Judge Rifkind has said in his argument, the issue is whether or not Cities Service conspired with the defendants to frustrate plaintiff, then Mr. Hill is not the logical person to begin with, let alone to be the sole witness.

The Court: Now, Judge Rifkind says, and I have reason to believe that it is correct, prima facie, that Mr. Hill is the man who knows most about these two topics. After all, you are examining a corporate defendant and you must do it by a person who has most intimate knowledge with those transactions.

Mr. Beshar: Of course, your Honor. We would concede for the moment without knowing anything about it that Mr. Hill is the most knowledgeable about Kuwait and Consortium. The point I am trying to make is that Kuwait and Consortium are not the essence of whether or not Cities Service conspired. They could have conspired

for a variety of reasons or for no reason—for Auld Lang Syne they could have conspired.

The Court: You are abandoning the essence of the position you took before me on the original motion?

Mr. Beshar: I am sorry. I didn't hear your comment, sir.

The Court: You are abandoning the basic position you took before me on the argument of the motion for summary judgment, then?

Mr. Beshar: Your Honor, emphatically not. We are remaining with the position that this is, to quote your Honor, a concatenation of events which reaches out and asks the question: Why?

Now, this man was in contact with Jones. Jones took [fol. 8362] a team over to Iran, and we want to know why he did not go forward.

The Court: I know.

Mr. Beshar: I suggest to you that there can be a variety of possibilities, and that we should not be restricted in our examination because plaintiff believes it was one of two possibilities, or both of them. It could be something else. The most appropriate way to commence the examination is to examine the people with whom he dealt.

The Court: I am not going to let you ask a man a lot of whys based upon the fertility of your imagination in asking questions. There has to be something more to justify asking questions in this case.

Mr. Beshar: Your Honor, I appreciate your concern. I have great respect for Judge Rifkind, and I can't believe he would allow any one of his client's employees to be abused by us by needless questioning. I assure you if we do not stick to the point and move the examination expeditiously in examining Mr. Jones, and the people who are directly involved in this case, and examine them, I might say, while they are still living, because we have terrible concern here, your Honor, in that Mr. Shaw and Mr. Whetsel, two of the principals, have already died, and now we are being asked to examine this lawyer for Cities

Service who will be an astute witness, in all probability, who will testify very expeditiously. Then we go back to the motion, and we are still kept away from examining the people who are essential to our case. Mr. Jones and Mr. Watson, sir, these are the crucial witnesses in this case.

The Court: Why do you say that they are crucial? You have no information or knowledge about anything that they did.

[fol. 8363] Mr. Beshar: Because they, better than anyone else, know why Cities Service did or did not—

The Court: I know, but you just can't ask questions. You have to come to court with some information.

Mr. Beshar: If events place these men directly in the orbit of the problem, I suggest the place you begin is the center, the man who has the control and power and made the decision not to go ahead.

The Court: The difficulty is that your arguments are convincing only in vacuo and a priori. But there is nothing of a factual nature that has been forthcoming.

Mr. Beshar: Your Honor, that is all I have, the factual nature of the case.

The Court: Judge Rifkind, you had something?

Mr. Rifkind: I rose not to argue the point, because there is nothing I need to add to what your Honor has already said, but there are two statements of fact to be corrected.

One is, at the time of these transactions Mr. Carter was not and had not been for a long time an employee of Cities Service. The reference to him as a former employee of Cities Service might suggest that he was one during the course of these proceedings, and that is not the fact.

No. 2, the reference to Mr. Hill as an attorney is, I think, half a full statement. He was a man who had been admitted to the bar. He has been an executive of Cities Service in its foreign department for many years, he is a senior vice-president, he hasn't practiced law in how long—a generation or more. He is a mature citizen. He

did go to law school. I think that would be a fair statement of the proposition that he is a lawyer.

The Court: All right.

I have not the slightest doubt that the way to go about this matter is to sign the order as proposed by Cities [fol. 8364] Service, with the understanding that at the conclusion of the examination of Mr. Hill the Court will entertain any application that appears to be reasonable and proper at that time, and I will do this on a witness-by-witness basis, and a subject-by-subject basis, so that there is a supervision and regulation by the Court of the kind and character to which I referred in the memorandum.

I am signing the order so that there is no delay.

Mr. Clerk, will you see that this is filed?

The Clerk: Yes, your Honor.

The Court: And have it returned to me after it is filed.

The Clerk: Yes.

The Court: All right. We will adjourn all proceedings in this matter sine die, subject to any applications that may be made.

[fol. 12056]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil 110-223

GERALD B. WALDRON etc.,

v.

BRITISH PETROLEUM CO., LTD., et al.

Transcript of Hearing—New York, February 9, 1965, 4 P.M.

Before: Hon. William B. Herlands, District Judge.

APPEARANCES:

Casey, Lane & Mittendorf, Esqs., Attorneys for Plaintiff, By: Samuel M. Lane, Esq., Robert W. Sweet, Esq.

Sullivan & Cromwell, Esqs., Attorneys for Defendant Standard Oil Company (New Jersey); By: Arthur Dean, Esq., Roy H. Steyer, Esq.

Milton Pollack, Esq., Attorney for Defendant British Petroleum Co., Ltd.

[fol. 12057] Donovan, Leisure, Newton & Irvine, Esqs., Attorneys for Socony Mobil Oil Co., Inc., By: George S. Leisure, Esq., J. R. Withrow, Jr., Esq., James M. MacNee, III, Esq.

Nixon, Mudge, Rose, Guthrie & Alexander, Esqs., By: Goldthwaite H. Dorr, Esq., Robert R. Thornton, Esq.

Cahill, Gordon, Reindel & Ohl, Esqs., Attorneys for Standard Oil Co. of California, By: William M. Sayre, Esq.

Paul B. Wells, Esq., Attorney for The Texaco Inc.

Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., Attorneys for Defendant Cities Service Co.; By: Simon H. Rifkind, Esq., Edward N. Costikyan, Esq.

[fol. 12058] The Court: The first item on the agenda is the motion of Patricia Waldron for an order substituting her. Is there anything further to be said?

Mr. Lane: I take it there is no opposition to that, your Honor, and I have a prepared order if you would like to see it.

The Court: I have a memorandum decision that I could read into the record.

Mr. Lane: Just as you wish.

MEMORANDUM DECISION GRANTING THE MOTION OF PATRICIA WALDRON FOR AN ORDER SUBSTITUTING HER, ETC.

The Court: I will read it now.

The Court hereby grants the motion of Patricia Waldron for an order pursuant to Rule 25(a) of FRCP, substituting her in her capacity as executrix of the last will and testament of the deceased plaintiff, Gerald B. Waldron as plaintiff in this action.

The defendants have not opposed the granting of this motion.

Agreeing with the position urged by the defendants, the Court will defer, pending the adjudication of liability by trial or otherwise, a determination of the issue relating to the survivability of the claim for the trebling of the alleged actual damages and of the claim for attorneys' fees in the event it should become necessary to consider that issue in [fol. 12059] this action. So ordered.

Mr. Lane: Then your Honor your memorandum as so ordered will be all that we need and we don't need to serve any final order at all.

The Court: Precisely.

Mr. Lane: Thank you.

I think we should provide that the caption will be amended.

The Court: All of the implementing papers necessary to assure formal compliance with the order will rest in the hands of counsel.

Mr. Lane: Thank you.

The Court: On the agenda are two additional motions. The motion made in behalf of Cities Service for a determination, a final determination of the pending summary judgment motion made by Cities Service and plaintiff's cross motion for discovery, dated September 15, 1964.

I will hear Judge Rifkind. I presume you represent Cities Service.

Mr. Rifkind: I will ask Mr. Costikyan to argue this motion.

The Court: Very well. I will hear the motion made by Cities Service for a final determination of the pending [fol. 12060] summary judgment motion.

ARGUMENT BY MR. COSTIKYAN

Mr. Costikyan: If the Court please, I would like to start with a brief word of history and I think relevant history going back to the 8th day of April, 1960, when Cities Service was faced with a claim by plaintiff, which he had carefully spelled out in his complaint and in that document it was charged that the defendants or some of them, other than Cities Service, had formed a conspiracy some time in the year 1928 and that in 1934 the rest of the defendants, other than Cities Service, had joined in that alleged conspiracy.

It was alleged that Cities Service was not a member of this alleged conspiracy, which it was claimed was directed against plaintiff in the year 1952, until some time in late August or early September, 1952, your Honor, and I am quoting from the complaint at page 19.

At that time, according to the plaintiff, Anglo-Iranian and Gulf conspired to offer to Cities Service Kuwait oil and Cities Service accepted and the complaint says: At this time and by these acts Cities Service entered the

alleged conspiracy and the complaint goes on to say that [fol. 12061] as a further consequence of joining the conspiracy, Cities Service gained a participation in the consortium some time later.

Now, your Honor, on that day in April, 1960, the plaintiff had repeatedly testified on his deposition that but for these acts, that Kuwait and consortium, he had no complaint against Cities Service and at that time, your Honor, we were dealing with the original complaint in this action, not a subsequent amendment. We examined our files and we found document after document. We did not rely on the credibility of any witness because there was no witness, but document after document that demonstrated that plaintiff was simply wrong. That Kuwait was not a bribe to Cities Service and the consortium was not a reward. We made our motion for summary judgment and we annexed on both the original and the supplemental affidavits some 81 documents and this court wrote an opinion after full and careful analysis of all the arguments and all of the contentions and all of the documents and your Honor said: It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against defendant Cities Service Company. The naming of Cities Service Company, as a defendant herein, when the complaint was drawn, was based only [fol. 12062] on suspicion and on a gossamer inference drawn from the mere sequence of events.

Later in your Honor's opinion you said "Because plaintiff's claim against the defendant Cities Service Company is judged by the entire available record so insubstantial the plaintiff will not be given carte blanche authority to conduct untrammeled pre-trial proceedings."

But your Honor did give him another chance and you said you may have examination on these allegations in your complaint and so that examination of Mr. Hill was had. During the course of it and indeed, your Honor, during the course of arguments in this courtroom concerning the scope of the examination and concerning the plaintiff's

own claim against Cities Service, the plaintiff invented a new theory. He said there was a complete turnabout of 180 degrees by Cities Service insofar as the subject of Iranian oil was concerned and he fixed the time with precision. He said when Mr. Jones was in Iran he was for it and by the time he got to Paris he was against it and that your Honor fixes the time pretty precisely at September 24, 1952.

And said Mr. Lane and the plaintiff, Cities Service was no longer interested in Iranian oil. It had the entire in- [fol. 12063] dustry in its grasp and it turned it down. It terminated its relations, it dropped its interest.

And so, your Honor, ultimately after several arguments and rearguments in 1964 of the spring your Honor gave Mr. Lane and the plaintiff authority to go ahead and examine on that theory, even though there was no allegation in the complaint, we were content to proceed and your Honor was content to proceed to permit an inquiry into the question of whether this change of position was the result of a conspiracy with the other defendants and so your Honor carefully drafted an order which gave full and complete examination on that subject.

You authorized examination concerning internal Cities Service communications and communications between Cities Service and other defendants during the period when this change was claimed to have taken place and if there had been anything to plaintiff's new theory of a turnabout, this examination would have revealed it.

Now, says the plaintiff, having had that examination, having pursued three witnesses through many pages of transcript, having examined dozens and dozens of docu- [fol. 12064] ments, he says that he was wrong. He says there was no turnabout. He says there was no 180-degree change. He says it your Honor, at page 20 of his affidavit in support of the motion for further examination.

He says "It does not happen to be the fact, however, that Cities Service lost interest in Iranian oil. Contrary to what plaintiff was told, Jones continued to take a keen

interest in Iranian oil as Watson himself admitted. A special Iranian room was set up at Cities New York office and put in the charge of a young Iranian woman, who looked after the files."

And so, your Honor, having had the examination, having denied what the documents showed on the original motion that Cities' interest continued and having put us through the examination, plaintiff now says well I was wrong on that, there was no turnabout and he is right now, there was no turnabout. There was no loss of interest and the entire premise for the examinations that consumed almost a year has now evaporated.

The other subject as to which examination was permitted again did not relate to any allegation of the plaintiff's, but merely to a speculative inquiry. He says he was trying [fol. 12065] to sell oil to Richfield in the summer of 1953. This was after his contract, his property, which is the foundation stone for his being in this courtroom. After that contract had expired, but he says he tried to sell oil to Richfield and they wouldn't buy and he wants to know whether this was the result of Cities Service interference. He doesn't allege that it was, your Honor, and he has admitted that when he drafted the complaint he had no factual basis to make that charge and he didn't have any factual basis to make that charge when his deposition was taken and that is found at page 6087 of Mr. Waldron's deposition.

Now, your Honor, he has examined Cities Service on this allegation or this theory or this speculative inquiry or whatever it is and he still has not a whit of a fact, nothing to support even the suspicion that there was any interference by Cities Service with this deal or prospective deal with Richfield.

But, your Honor, I go farther: I say that on the basis of plaintiff's own testimony and the admissions that he has made on this motion, he has demonstrated that if that claim was made that we did interfere, because we were part of [fol. 12066] a conspiracy, that the claim would be sham.

According to the plaintiff, your Honor, at page 12 of his brief, and it is a brief he filed last fall, he says:

"Plaintiff does not claim that Jones was acting on behalf of a conspiracy when he sought the invitation or when he went to Iran or when he held his Tehran press conference or when he wrote the conclusions to his final draft report on October 31, 1952."

That final draft report, your Honor, I will refer to later, but it was a draft report in which Mr. Jones set forth his conclusion that Cities Service would not be willing to get into the Iranian situation unless the Iranians first made arrangements with the British to compensate them and secured their cooperation so that there would be tankers and markets available.

According to the plaintiff on this motion, when Mr. Jones reached that conclusion, which is the key conclusion in the whole case, according to plaintiff he was not acting as a conspirator.

And so, your Honor, we now have it from the plaintiff from his original complaint that we weren't a conspirator up until late August or early September, 1952; from his brief I have it that we weren't a conspirator right through [fol. 12067] October 31, 1952; and from his affidavit, which I read to you earlier, where he admitted there was no loss of interest, we have ourselves still interested in Iran until July of 1953, but the story doesn't end there, your Honor, because it goes right on and according to plaintiff we were still not a conspirator in the spring of 1955. Now, how do I demonstrate that?

There was an exhibit marked, your Honor, and it was brought before your Honor earlier relating to a conversation between Cities Service personnel and the Undersecretary of State at the time who was in charge of dealing with and attempting to solve the Iranian situation and according to that memorandum, which has been accepted by the plaintiff and indeed relied upon by him in this motion, Cities Service in February of 1954 was going to the Undersecretary of State, who was working out what later

turned out to be the consortium, is objecting to it, is saying that it is monopolistic, is saying it is wrong because it excludes us and the other have-nots and is saying that it is bad policy because it creates a monopoly of substantially all world oil reserves in a few companies, not including us. [fol. 12068] And, says the plaintiff, accepting this evidence at page 20 of that same affidavit, in fact and I quote your Honor "In fact Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies." Some conduct for a co-conspirator.

This, your Honor, carries us through the spring of 1955 and so what plaintiff would have to claim, if he wished to assert that as a co-conspirator with some alleged conspiracy we interfered with his dealings with Richfield, that Cities Service was going down to Washington and complaining to the federal government about the other defendants; that it complained that it had been excluded from the benefits of what this plaintiff says is a conspiracy by the other defendants; that it resented the fact; that it was not bribed by Kuwait; that it was not rewarded by consortium; that it had a continued interest in Iran and that it had advised Iran as a non-conspirator and in good faith that the Iranians should settle with the British, but, says the plaintiff, all this was a big smoke screen, that really secretly under it all Cities Service was a memorandum of [fol. 12069] a conspiracy and, as such, excluded from its benefits, it was telling Richfield not to deal with the plaintiff.

Now, your Honor, in Mr. Waldron's brief many years ago he dismissed the case of Griffin against Griffin in which summary judgment was granted as a case which dealt with the ravings of a maniac. I submit to your Honor that this unasserted case as to Richfield here on the basis of which some further examination is sought is no more rational and no more tenable and no more assertable than the ravings which were dismissed in Griffin.

Now, your Honor, there were some other aspects to the claim which I would like to deal with. First, in order to buttress the assertion that there had been some kind of change of position by Cities Service, which has now been abandoned, Mr. Waldron came up with the theory that a J. A. G. Sandberg, who was a Cities Service stockholder in Holland, had been the secret communicant from this alleged conspiracy to Cities Service because it is clear that Mr. Jones talked to Mr. Sandberg when he was in Holland in August and in September of 1952 and, says plaintiff, Mr. Sandberg was a member of the Shell Finance Committee. Shell is an alleged co-conspirator and there it is. [fol. 12070] Well, there are only a few things wrong with that, your Honor. First of all, there was no change in position. Secondly, according to the plaintiff at the time these conversations took place, Cities Service was not an alleged co-conspirator and he doesn't allege it. The third thing, your Honor, is that Sandberg had absolutely nothing to do with the Royal Dutch Shell Company or any of its subordinates or affiliates; never did; hasn't to this day and it's another scrap of misinformation which the plaintiff picked up some place, founded a long motion on, just as he founded a long complaint when he picked up his misinformation about Kuwait and consortium.

What is left in this case, your Honor? What is the material proposition of fact which plaintiff asserts, which defendant denies? He has examined on his allegations, on his theories, on his suspicions, on his speculations. There have been 2,500 pages of transcript. That is the equivalent, I would think, of 10 full court days. We took, actually, 15 days of deposition to cover it.

The allegations of the complaint has been demolished and forgotten long ago. The theory of the 180-degree turnabout has now evaporated. The suspicion against [fol. 12071] Richfield still remains a suspicion, which is untenable. Every hypothesis of guilt has been examined into and every surviving Cities Service agent or employee,

who had any knowledge of the facts, has been examined and this is what is left of plaintiff's complaint because I have taken it out of his own documents, his own affidavits, his own pleading. He says in 1928 there was a conspiracy, but Cities Service was not part of it. He says in 1934 all the defendants joined in it, but not Cities Service. He says in 1952 all these defendants conspired to deny the plaintiff tankers and financial services and to boycott them, but not Cities Service.

He says that in July and August of 1952 he negotiated with Cities Service, which declined to purchase any oil from him instead seeking an invitation to Iran and, he says, that when they did that they were not members of the conspiracy. He continues that he did get an invitation and Jones accepted it and he went to Iran, but when he did so, he was not a member of the conspiracy.

And he says that Cities Service concluded that it was not possible to reactivate the Iranian oil industry without a settlement and cooperation from the British and that [fol. 12072] is the report to which I have referred. He says at the time Cities Service so concluded, Cities Service was not a conspirator.

He continues that the Iranians did not settle with the British until 1954 and when they did they reached a settlement which did not include Cities Service. He says during the period from 1952 through 1954 and early 1955 Cities Service "watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for those companies."

Then comes his prayer for relief, your Honor. Having alleged facts which demonstrates that Cities Service was not a conspirator, he says, by reason of the premises plaintiff has a right to determine whether maybe Cities Service nevertheless conspired with somebody at some other time in some manner unknown to the plaintiff.

Now, I say to your Honor that is not a complaint upon which any relief can be granted in this court, but what the

plaintiff is really saying is I know I have nothing, I know that after 2,500 pages I have established Cities Service's innocence, because I say so, but don't grant the motion. [fol. 12073] Maybe one more examination of other people, not of Cities, might reveal some other basis to claim that Cities Service conspired with the defendants to injure me and, says the plaintiff, I have the right to all the examination I want once I have gotten a complaint in this court.

Your Honor, I submit to you that is not the law. It has not been the law and if it ever was thought it might have been the law, that thought has been demolished in the last year in this circuit.

The law, it seems to me, it's clear and there is a recent case, your Honor, which we have made a little supplemental memorandum of, which I would like to hand up at the end of my argument, the Schwartz case, which was decided in late December by the Court of Appeals, which made it clear that the unsupported assertion of a conclusion of fact which will not defeat a motion for summary judgment where the facts demonstrate that the conclusion is insupported and that is all there is in this case, your Honor, is one allegation in one document in the amended complaint which says, I think Cities Service conspired.

I want to suggest to your Honor that there is no question [fol. 12074] in this case and no real issue between us as to what the law is. I say that under the Arnstein decision, summary judgment should be granted because there is no issue of credibility of any deponent upon which we rely. We rely on the documents and on plaintiff's own admissions and under the Sandpiper case there is certainly no question that plaintiff has exhausted the rights which he is granted under the Federal Rules.

I would like to suggest, your Honor, however, another alternative and that is even if there were no summary judgment, I cannot figure out how for the life of me what further examination is supposed to relate to. What is the disputed proposition of fact which plaintiff asserts and I

resist and what is it material to? Certainly at this point the allegations in the complaint are out and it is not enough, your Honor, just to assert a bald proposition and say, therefore, I can examine everything under the sun.

Here are the specific things that I find in the opposing papers that he says he wants to examine on and I say to your Honor that every one of these alleged transactions antedate October 31, 1952, and in his brief he drew a curtain at that date and said well, I will finally admit that [fol. 12075] everything prior to October 31, 1952, you weren't conspiring.

He says he wants to find out all about an AVGAS transaction in which Mr. Waldron wanted to get help from Cities Service to sell some aviation gas to the United States Government and Mr. Waldron, according to Mr. Waldron, was told by Mr. Watson, we won't help you, says Mr. Waldron, but I was told that Mr. Jones told Mr. Corder he would help him and he didn't.

Well, your Honor, I don't care what happened on that transaction. It took place in September of 1952 and he has said to me you weren't conspiring then and he knew all about the AVGAS transaction when he said it. There is no later discovered fact.

He says, I want to find out why Mr. Jones wanted to keep this trip to Iran secret. I don't care why he wanted to keep it secret. For the purpose of this motion I will admit that he did, but what difference does it make? According to him he wasn't a conspirator when he went to Iran.

He says he wants to examine about an alleged conversation in which Cities Service promised Mr. Waldron one to two cents a barrel on any oil that might be imported. That conversation took place, according to the plaintiff, [fol. 12076] on July 8, 1952. I don't care what they talked to him about. The plaintiff has said I was not a conspirator on that date and that is wholly irrelevant to any claim he can assert against me. He says that I would like to show Mr. Jones' motives in going to Iran were not as noble as

he wished or as he said they were because Mr. Jones said he wanted to do a statesmanlike act and, says the plaintiff, I think he was just trying to make a fast buck for Cities. Well, I don't care why he went to Iran. If he went to Iran because he had an interest in occultism and was merely using all of this as a cover, it is irrelevant to this plaintiff's purposes because he has admitted that when Mr. Jones went to Iran he was not a conspirator.

He says he wants to find out what Carter can tell him and, yet, every one of the transactions to which he refers in his affidavit, as to which he would like Mr. Carter to examine, are transactions antedating October 31, 1952, to the extent we had anything to do with them.

Now, your Honor, I go through all this and I come out with the same question: What is the controversed issue or material fact which requires a trial, which requires examination, which requires anything?

[fol. 12077] I say to your Honor finally that he suggests that he didn't get enough documents or have enough depositions. He got 81 documents on the motion for summary judgment. He marked 141 on his depositions. There were many others that he got that he didn't mark and I think that is a pretty substantial production of documents for a transaction with which we had such a fleeting connection.

That brings me, your Honor, to my conclusion. Why are we here? The basic question which plaintiff still asks—and it runs through his papers as it did the day we made our motion—is why didn't Mr. Jones and Cities Service take over the Iranian oil business? There it was in his hands, why didn't he do it? Was it because of conspiracy? Out of that basic query he constructs a whole bunch of subordinate ones. Why did he want to keep the trip secret? What could Carter tell us? Why didn't Jones get the gold medal from the API in November of 1952? I say to your Honor this is a great example of taking a piece of evidence, which negates any claim he might make, and turning it around because if Mr. Jones had received the gold medal, after he allegedly had been severely criticized by the oil

[fol. 12078] industry, after he had decided not to go ahead in Iran and after all the rest of the things that are talked about, I am sure that that gold medal would be the reward for going along with the conspiracy, but he didn't get the medal and why he didn't get the medal or whether he was supposed to get the medal has nothing to do with whether we conspired because they all relate, each one of these propositions, to one question: Why didn't we go ahead in Iran?

That question, your Honor, the plaintiff has answered knowing of the dates that he was talking about, knowing of the report he was talking about. The documents give the answer, the depositions give the answer and plaintiff has finally been forced to give the answer because he said when Mr. Jones knew of those conclusions, he was not a conspirator.

The conclusions were exactly what every witness testified has been Cities Service's attitude and opinion all along. Iran would first have to settle with the Anglo-Iranian Oil Company. Iran would first have to get their cooperation in order to get markets and tankers and then, if ever, Cities Service would be prepared to assist.

Now, I say to your Honor that is the end of the case and [fol. 12079] I say that when Mr. Waldron acknowledged that in 1955 we were complaining that we had been excluded, he put the capstone on his case and he can't go back and rewrite the beginning. He has alleged a consistent course of conduct on the part of Cities Service. The documents show there is no turnabout, there is no change and the documents say the very simple story that even plaintiff was forced to admit that there was no conspiracy by Cities Service.

I suggest to your Honor that the issue now before the Court, putting aside the many issues that have been before us before, is a simple one: Can a defendant be subjected to a multi-million dollar lawsuit to satisfy plaintiff's curiosity as to whether he had some kind of a claim against that defendant? Can he get out and sue J. P. Morgan &

Company, which is a good solvent debtor, and say "You conspired against me" and then examine J. P. Morgan & Company and everyone to whom J. P. Morgan & Company talked on the theory that maybe by asking other people what Morgan said, he will find some shred of evidence that there was an agreement to hurt him.

I say to your Honor that is not the law; that one does not get that privilege by filing a complaint and that when a complaint contains merely that, the unsupported conclu-
[fol. 12080] sion, Rule 56 says throw it out of court. I submit, your Honor, this is a lemon and as a lemon as far as Cities Service is concerned, it has been squeezed dry. It has been almost five years of litigation on what started off a simple question of Kuwait and consortium and ended up encompassing every suspicion and every speculation a fertile mind could come up with. The papers are on this desk. There are 2,500 pages of transcript, over 200 documents, dozens of briefs, dozens of affidavits and I say to your Honor it ends where it should have started with the plaintiff admitting that throughout the period concerning which he has examined, Cities Service wasn't conspiring with anyone. I suggest to your Honor all that remains is to ring down the curtain on this aspect of the case and I urge you with all my strength that now is the time to pull that cord.

[fol. 12081]

ARGUMENT BY MR. LANE

Mr. Lane: May it please the Court, I think if I may remind your Honor of a case that I know your Honor knows well and yet my whole argument, I would like to have this frame of reference of Pola against Columbia Broadcasting System.

Just briefly the facts in that case, which very largely parellel the facts in this case, were these:

The plaintiff, Pola, contended that he had created and built up in Milwaukee a most successful ultra high fidelity broadcasting station, and that Columbia Broadcasting Sys-

tem, the defendant, which had a contract with him, cancelable on six months notice, formulated a plan through the use of other persons to acquire the ultra high fidelity station in Milwaukee; have that other person take over the plan, and then as soon as the Federal Communications Commission authorized multiple ownership, take it over, cancel the contract with him, Pola, then drive him out of the business, and then fold up the ultra high fidelity broadcasting in Milwaukee, all with a view to protecting its heavy investment throughout the country in what are called very high frequency stations.

In that case the plaintiff Pola was permitted to examine [fol. 12082] everything he sought to examine; he was permitted to take the deposition both before and after CBS moved for summary judgment of any employee or officer or person alleged to have participated in the conspiracy and he exhausted all of the available evidence.

When summary judgment was granted against him the United States Supreme Court said that in such a complex anti-trust case, where of necessity the evidence was in the hands of the defendants, and where motive and intent were very much in issue, there was enough to have made the granting of that motion improvident.

Justice Harlan dissenting particularly emphasized that Pola had had the opportunity to see everything.

The reason assigned by CBS for canceling its contract with Pola's station was simply that it was exercising the normal right of a producer to select his outlets.

Counsel for CBS emphasized over and over that there is not a shred of evidence to show that this was anything other than a normal commercial decision.

[fol. 12083] The parallel between the two cases is precise.

Now contrast, if you will, the situation in which the plaintiff finds himself here. In the first place, when he started his action, as in every anti-trust conspiracy case, he was on the outside and it was impossible at the beginning for him to be precise. He is not, I submit, to be confined forever in this litigation to the surmises which he

made before he had the opportunity to inquire into any of the evidence at all, namely, the Kuwait and consortium aspects of the transaction.

When we came into court, before your Honor was put in charge of this case, the defendant to a man asserted that they did not know who Mr. Waldron was, and that they would be unable to answer the complaint until they had an opportunity to examine him.

The Court granted them permission to examine him and meanwhile stayed oral examination on Waldron's part.

After he had been examined for six days, it seemed to me that they knew all they needed to know about him, at least to answer the complaint so that we could get this case on the tracks in the normal process of an anti-trust [fol. 12084] case, and therefore moved to terminate the deposition of the plaintiff.

The motion was denied and opportunity was taken at that occasion to outline a series of further examinations running for another 260 days, meanwhile continuing to stay so that Mr. Waldron had no opportunity whatever to conduct examination on his own behalf.

Then Cities Service moved for summary judgment. In our brief in our position to Cities Service's motion, made I should point out before Cities Service or anybody else had served an answer to the complaint, we pointed out that one principal witness was already dead, Mr. Shaw, at Cities Service, and Jones and Watson and Lowe, who were the other principal officers who dealt with Waldron and Cities Service, were approaching retirement age.

On the argument when your Honor asked me what we wanted I said "The place to begin is with Jones." Your Honor granted an examination, but it was a limited examination, and it was framed as Cities Service asked the Court to frame it, permitting us to examine only Mr. George Hill, not Mr. Jones, who was the principal actor in the picture [fol. 12085] on behalf of Cities Service.

When your Honor did that you did it with perfect good conscience; you did it intending to do something construc-

tive; you did it intending to maintain a firm control of this action for a proper purpose. I think in retrospect at least I am permitted to say it was a mistake.

When your Honor announced that you were going to permit that examination you said that in the ordinary case examinations would be liberal but in this particular case it seemed to you that you should approach it with pragmatic caution. That you should look at it through the other end of the telescope and that instead of granting a broad examination and then permitting the defendant to come in for a protective order, you would start it the other way around, with a narrow examination and permit the plaintiff, if he could show cause, to apply for a broadening of the order.

I understand why your Honor did it, I salute you for having done what you thought was the proper thing to do, but I suggest most respectfully that it has been one of the greatest stumbling blocks to our proof in the case and that when you consider, as you must, what Mr. Costikyan has [fol. 12086] just said to you, you must at the same time recognize the handicaps under which we have labored to get more precise information in support of our claim.

We then proceeded with the examination of Mr. Hill, and while that was in progress, unfortunately for us, Mr. Jones was killed. His death took place on March 1, 1961.

In November, 1962, we came back to your Honor and asked for further discovery. Our motion was denied. So we went back to examine Mr. Hill further, and when that examination was concluded, we then came back to the Court again, this time it is in May, 1963, and we asked for examination of Watson, Frame and Heston.

Your Honor at that time indicated that we should submit something in the nature of an inventory of facts and circumstances which would allow inferences in support of plaintiff's claim as distinguished from mere conjecture and suspicion.

I have since to my regret learned that your Honor felt that the memorandum which we submitted in attempting

to comply with your Honor's request should have instead have been an affidavit, but nevertheless your Honor granted in June, 1964, at the time when the motion by the other [fol. 12087] defendants to dismiss the complaint was denied, an examination of Messrs. Watson, Frame and Heston.

Pursuant to an order, a copy of which I have in my hand, which said that the examination shall be limited to certain subjects, and then provided that the defendant Cities Service Company should produce to plaintiff ten days in advance of said examination, copies of all documents not heretofore produced to plaintiff in the possession or control of the defendant Cities Service Company, which relate to the subjects upon which the defendant Cities Service Company is to be examined.

When we held that examination Cities very carefully produced only those papers which came within the narrowest possible interpretation of your Honor's order. For example, Cities Service would produce, if there was such a thing, a document which constituted a communication between the deponent and another Cities Service employee. But if there was a document which referred to that communication but was not itself that communication, it was not produced to us.

So that rather than produce the documents which re- [fol. 12088] lated to the subjects upon which the examination was being conducted, Cities would only produce the documents which were in fact the communications.

This meant, for example, that we couldn't get any of the Jones papers. One thing which the examination made very clear is that the witnesses—I should say did not—would not —the fact is they did not testify on anything of substance which was not within the four corners of the document produced and it made this case more than ever before what we must all recognize today it is, namely, a complex paper case. No paper, no testimony; no paper, no reliable testimony.

At this point in our efforts to find out what Cities Service did and why Cities Service did what it did and refrained from doing what it refrained from doing, we are not only on the outside, as normally in an anti-trust case, but Mr. Jones, the principal actor, is dead. He died while shielded by the Court on the application of his lawyers, and then when the Court granted us limited discovery, Jones' lawyers withheld all of Jones' papers. Not only is Mr. Jones dead, Mr. Whetsel is dead.

Whetsel was the expert in foreign production of the [fol. 12089] Cities Service Company. He went with Mr. Jones to Iran, Whetsel was at the dinner at the Country Club with Waldron and Nelson and Lowe just before Waldron and Nelson went to Iran to get the invitation.

Lowe also is dead. Lowe was one of the top officers who was most involved in the transaction between Waldron and Cities Service Company. So that from every side it is indicated to the Court that the papers are the things which will explain what happened and why it happened, and we learned in the course of this most recent deposition, series of depositions, that an Iranian Room had been set up at the Cities Service Company to accumulate these papers.

We knew also and had suggested to the Court when we applied for this examination that right after the suit was instituted Mr. Watson sent out a memorandum to various participants and asked them to report to him on Mr. Jones' trip to Iran in 1952, and to get their papers together.

I remember now as I stand here that when that subject came up before your Honor, your Honor asked whether or not that kind of material didn't represent the work [fol. 12090] product of the lawyer. I think you will recall it. You were, of course, thinking of Hickman against Taylor. As I recall Hickman against Taylor and cases subsequent to it, although it may have had some feature of work product of the lawyer, where the witness is unavailable to the attorney for the other side, then an exception to the Hickman against Taylor rule indicated.

Your Honor I think will recall that in Hickman against Taylor, which involved the loss of life of some seaman who

went down on a tug in Philadelphia, that one of the arguments made was that his opponent, who was attorney for the plaintiff, could also have interviewed the survivors.

In this case we couldn't interview Mr. Jones, we couldn't interview Mr. Lowe, we couldn't interview Mr. Whetsel, and not only because they would have been unwilling to be interviewed, but we couldn't compel them to give us the information, because although they were alive at the time, we were stayed from doing any such thing.

So it seems to me, your Honor, that today when you consider how much we have been able to gather together in the face of these handicaps, that it ill behooves Cities Serv- [fol. 12091] ice counsel to say that we haven't shown enough when, as they very well know, the files of these important witnesses, Jones, Whetsel, Watson and Lowe, are gathered in this Iranian Room, and that if they were shown to us, then we might be satisfied that we are mistaken in our pursuit of their client.

It strikes me that when one protests that they are innocent and when one protests that they are being harassed, when there is an answer so simple, which is simply to show us those papers, their protests should fall on deaf ears.

Now, taking these handicaps, what have we shown so far? What is our inventory? It is augmented since we made it last time, and this time, at your Honor's request, I have tried to put it in the form of an affidavit, which this time I hope you will recognize makes a very conscientious effort to comply with your Honor's request. It shows in brief that the Cities Service Company had never had a source of oil in the Middle East. It had wanted it, it had negotiated for it with the Gulf Oil Company in 1948 and again in 1950 or 1951. And that when Waldron approached the Cities Service Company in 1952 with the proposal to sell oil under his contract, Cities was quick to take advan- [fol. 12092] tage of that opportunity to get for itself an invitation from Premier Mossadegh, with a view to taking over the whole Iranian oil industry.

One of the new items on the inventory is, of course, Mr. Watson's memorandum marked "Secret Draft Secret," in which he lays out for Mr. Jones a scheme for the acquisition and control of the Iranian Oil industry through the leadership of the Cities Service Company of a consortium of independent companies, none of whom up to that time had any interest to protect in the Middle East.

The plan is quite plain, it is that one of the predicates for it is that Iran will never be able to go back in harness with the Anglo-Iranian Oil Company; another predicate is that the American majors who already have interests to protect in the Middle East will make common cause with Anglo-Iranian and therefore Cities Service should work through independent American companies and the thesis of it is that Cities Service can provide the management and the technical know-how to rehabilitate the Iranian oil industry and get Iranian oil flowing again to world markets.

I have said nothing about tankers. I don't remember, [fol. 12093] as I address the Court, whether tankers were covered in that draft marked "Secret," but it was very much on Mr. Jones' mind and when he went to Iran he stopped off in Holland on the way and telephoned to Mr. Watson to find out what Cities Service experience had been in recent years with getting tankers into the Middle East and how much Cities Service could count on handling within a reasonably short time.

This initial plan which was outlined by Mr. Watson in the secret draft is modified and elaborated but not changed in substance when you follow the various memoranda written by Jones and Frame and Heston for Prime Minister Mossadegh down to, as I recall it, October, 1952.

Of course, when Mr. Watson got up his first draft he wasn't master of the facts. Additional facts were gathered together about tankers, for, as I have indicated, when Mr. Jones was in Holland and the further facts with respect to the physical facilities, the fields, the pipelines, the docks, and the refineries in Iran were gathered while Jones and his party were in Iran.

With all of those facts Mr. Jones apparently concluded that there were two ways to reactivate the Iranian oil in-
[fol. 12094] dustry. In both of those plans Cities Service played the leading part. The way which would have been, you might say, most dramatic in which oil would have started flowing most quickly contemplated that a mixed claims commission would be set up under Mr. Jones' chairman to settle the mutual claims between the National Iranian Oil Company and the Anglo-Iranian Oil Company.

And that then Cities Service, not called so by name but described as the American company, would reactivate the industry and sell oil to the British who would transport it to the Eastern Hemisphere markets, which they controlled, and in that means acquire compensation for their properties which have been taken over by the Iranian Government. That was the big plan.

The smaller, more conservative plan, was in the event that no agreement could be reached compromising the claims, no cooperation could be secured with the Anglo-Iranian Oil Company, and in that event an American company, again the Cities Service Company, would assist herein to start introducing its oil again in world markets on a more modest scale.

[fol. 12095] And the prediction was that in a very short time, as much as twenty percent of the then production of a million barrels a day could be absorbed in the United States.

In his argument Mr. Costikyan said that the key fact here is that Cities Service concluded that they could not go on without Anglo-Iranian cooperation.

I have tried to indicate, and I think the papers fully support my statement, that that is not the fact; that the alternative plan was to reactivate the Iranian oil industry the way that Mexico had done, selling less oil, but at the same time, of course, taking all of the price, so that the sale of less oil would mean more financially to the seller in Iran than the larger quantities which could be sold by cooperating with the Anglo-Iranian Oil Company.

Now, it has been said several times to this Court, twice when I have not been here, perhaps once when I was here, but, quite frankly, I don't recall it ever having been said in my presence, but I know it has been said twice in my absence, and it is said flatly in the papers which reassert the pending motion for summary judgment, that to have signed [fol. 12096] the complaint in this case was an irresponsible act.

Since I am the one who signed that complaint. I am the one who is accused of these irresponsible acts.

I do not reciprocate with accusation of irresponsibility on my opponent's part, but I do state that I think my opponent has been grossly misinformed.

Your Honor may recall that when we first argued this motion in May of 1960, there was some talk about Mr. Jones having gone to Kuwait while he was in Iran, and maybe I can bring it back to your mind if I would remind you that the Court said:

"Of Kuwait, it had been written up in Fortune Magazine. It sounds like a paradox."

Then my opponent said: "It is true that Mr. Jones was invited to go to Kuwait, buf he never got there."

The Court said: "Is that on the record?"

My opponent: "I don't know whether it is or not, but, if necessary, I will put in a supplemental affidavit to cover that. It never occurred to me that anybody would claim that he had."

[fol. 12097] My opponent was grossly misinformed. Apparently he was told that Mr. Jones was invited to go to Kuwait, but he wasn't told that Mr. Jones had in fact gone to Kuwait.

In fact, he must have been told, or he wouldn't have made any such statement, that Mr. Jones did not go to Kuwait.

In our recent deposition of Messrs. Watson, Frame and Heston, we have positive proof that Mr. Jones went to Kuwait, and that statement which I have referred to from the prior argument was conceded by plaintiff's counsel in

briefs submitted in support of this motion, and I venture to say that although counsel was ignorant of the falsity of the statement, their client must have read the brief and must have been aware of the falsity of the statement.

Now, I emphasize this because I don't think that my opponents know what is in that. I think it is from their point of view something that they better not know about, but I think from the point of view of justice and fair play that in such a case as this the plaintiffs should have access to those papers, and that to give the plaintiffs access to those papers would bring a very short and unharassing termination of the present controversy between the plaintiffs [fol. 12098] and Cities Service, either by the granting or denial of Cities' motion for summary judgment, and that until we see those papers, it is entirely premature to do anything of the kind, that is to say, to grant the motion for summary judgment.

Now, my predicate, your Honor, is that ample has been shown from these depositions with respect to Cities interest in Iranian oil and with respect to how Cities is protecting that interest, to deny Cities' motion for summary judgment and, of course, if Cities motion is denied, then the plaintiffs' motion for discovery under 56-F becomes academic.

We haven't spoken of plaintiffs' cross-motion for discovery. I have only spoken of it in connection with the frame of reference to emphasize how limited the plaintiffs' opportunity has been to get the facts which plaintiff is sure exists.

So if I may reserve my right to speak very briefly on the other motion, this concludes all that I have to say on the subject of the Cities Service motion for summary judgment.

I have a supplemental memorandum which we prepared today in opposition to the supplemental memorandum of [fol. 12099] Cities Service which I would like to serve, with the permission of the Court, and submit.

I was in some dilemma, I must confess, as to just what the procedure would be today, because when my client died

all further activity in the case was stayed, except for the application which might be made on behalf of the estate, and it did not seem to me that we were in a position to serve any papers until we had been re-admitted to the action on behalf of the Executrix.

The Court: Do you have that supplemental memorandum?

Mr. Lane: Yes, I do, Judge.

The Court: You may submit it now.

(Paper handed to the Court.)

The Court: I don't think it is necessary to hear any further argument this afternoon on any of the matters before me.

Is there anyone else who wishes to be heard on any phase of these matters?

ARGUMENT BY MR. DEAN

Mr. Dean: Well, your Honor, you may not want to hear me at this time, but I would merely like to point out that whether your Honor grants or denies the Cities Service [fol. 12100] motion, the plaintiffs' motion against the other defendants is only made in connection with their application that the Cities Service motion not be granted, and I think that the record is completely absent of any indication whatsoever that there ever was any conversation between Mr. Jones and any of the other defendants.

I think that before there can be any examination of any of the other defendants, that they would have to show relevancy, and they would have to show need, and they would have to show scope, and I would submit that they have not sustained the burden of proof in any of those respects.

They relied for their need to examine the other defendants on a single document, which is Cities Service 124 for identification, the letter of December, 1952, that in its alleged effort to do everything to help Iran solve its problems that Jones has had conferences—and I quote—"with members of the outgoing and incoming governments".

And then there is some deletion.

Also, "extended conference with oil executives, publishers, members of the press and newspaper people."

But it is quite obvious that he was, or at least that he [fol. 12101] thought that he was acting against both Anglo-Iranian and any of the defendants who had other interests in the Middle East.

So there isn't anything in the record to indicate that at any time Mr. Jones, or anyone else from Cities Service, ever had any conversations with any of the executives from the other oil companies.

So I would submit that there has been no demonstration, in accordance with the rules, of either relevance or need or scope, of any need for any discovery of any of the other defendants.

So with respect to time and scope, the plaintiffs' application covers the period from June, 1952, which is, according to their allegation, the first time the Waldron group got in touch with anyone from Cities Service, through January, 1955, which by their own, plaintiffs' own admissions, is some eighteen months after their alleged contract by its very terms had expired, and plaintiff hasn't limited the period or requested discovery to any date which would be appropriate to any specific issue which the plaintiff might attempt to justify in this proceeding, so it seems to me that the plaintiff has completely failed to sustain any burden of proof [fol. 12102] for discovery against the other defendants.

There is one other matter also which I am sure your Honor has in mind, and that is, depending upon the outcome of this Cities Service's motion and the plaintiffs' cross-motion, fixing of the time for the other defendants to answer.

I don't know when your Honor wants to hear us on that point, but that ought to be taken up at some time.

Thank you, your Honor.

The Court: Well, I think that rather promptly after the decision of the matters heard this afternoon, some spokesman for the defense should activate the Court and counsel for the fixing of a time to have these other matters taken up.

Mr. Dean: Thank you, Your Honor.

Mr. Lane: Your Honor, we have already stipulated on the time for the answers, and I don't know what other matters there may be, but nevertheless we have been in litigation so long—

The Court: My remark is in the nature of an omnibus catch-all reference. Anything that is pending that has to be taken up will be taken up when I dispose of these motions.

[fol. 12103] Mr. Lane: Of course, your Honor.

The Court: I didn't want to limit the agenda.

Mr. Lane: Of course.

Mr. Costikyan: Your Honor, I don't want to press, but I want to be sure that I did understand.

Is it your Honor's view that you prefer not to hear any rebuttal from me?

The Court: I don't think it is necessary.

Mr. Costikyan: All right, your Honor.

There is only one thing I would like to say—

The Court: I saw you stand up before, and you probably will go away feeling that there is something that I ought to know, so you may as well get it off your chest.

Mr. Costikyan: May I get this off, your Honor? Mr. Lane has made reference to a representation that was made by my senior partner some years ago in the proceeding.

The Court: I remember.

Mr. Costikyan: And I am responsible for it, your Honor, but I will only plead this as justification. The source of my information was Mr. Waldron in his deposition, who [fol. 12104] said, "I don't believe he went to Kuwait."

The Court: The matter has been resurrected a number of times, and I don't blame Mr. Lane for resurrecting it

again. It is good advocacy. I don't think he should be criticised for it. On the contrary, it is a legitimate argument. How weighty it is is another story.

Now, is there anything else that you think I ought to know?

Mr. Costikyan: No, your Honor. I will forego for a while.

The Court: Do you feel that your specific points have been answered by Mr. Lane?

Mr. Costikyan: No, your Honor. I am still waiting to hear what the material proposition of facts which plaintiff asserts is contravened by us and requires any further examination.

The Court: Well, now, do you feel there is anything Mr. Lane has said which requires any amplification by way of the record, or do you intend to rest?

Mr. Costikyan: I would like your Honor to know that in our affidavit we deal with the question of the scope of [fol. 12105] document production.

The Court: In the past or future?

Mr. Costikyan: On this limited thing about whether or not Mr. Jones' files were produced.

Of course they were, your Honor, to the extent that they were relevant to the scope of the examination that you had directed.

I think that is all covered in my papers.

The Court: All right.

Mr. Lane, is there anything that Mr. Costikyan said this afternoon that you think should be covered by you in writing, or are you content to rest on the record?

Mr. Lane: I am content, your Honor, to rest on the record.

The Court: Very well, sir.

Then the Court will reserve decision on all of the motions that were argued.

Mr. Lane: Thank you.

The Court: Thank you, gentlemen.

[fol. 462a]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 376—September Term, 1965.

Argued May 13, 1966

Docket No. 30144

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased, Plaintiff-Appellant,

v.

CITIES SERVICE Co., Defendant-Appellee.

Before: Waterman, Anderson and Feinberg, Circuit Judges.

Appeal from summary judgment in favor of defendant in the United States District Court for the Southern District of New York, William B. Herlands, *Judge*. Affirmed.

Samuel M. Lane, Esq., New York, N. Y. (Alan R. Wentzel, Esq., and Casey, Lane & Mittendorf, New York, N. Y., on the brief), for Plaintiff-Appellant.

[fol. 463a] Simon H. Rifkind, Esq., New York, N. Y. (Edward N. Costikyan, Esq., Leonard M. Marks, Esq., and Paul, Weiss, Rifkind, Wharton & Garrison, New York, N. Y., on the brief), for Defendant-Appellee.

OPINION—June 6, 1966

ANDERSON, Circuit Judge:

This is an appeal from a final order of the District Court for the Southern District of New York granting a motion for summary judgment made by the defendant Cities Service Co. and denying the plaintiff Waldron's[1] motion under F. R. Civ. P. 56(b) for further discovery. Cities Service was one of seven major oil companies named as defendants in this treble damages action brought on June 11, 1956 pursuant to §4 of the Clayton Act, 15 U. S. C. §15 (1964 ed.). Stated in general terms, the suit concerns plaintiff's claim that, because of the conspiracy of Cities Service and the other defendants, he was prevented from exploiting his contract for the importation and sale of Iranian oil. The rather involved facts will not be recited here as they have been stated fully and with great care by Judge Herlands in two reported opinions. See, *Waldron* v. *British Petroleum Co.*, 231 F. Supp. 72 (S. D. N. Y. 1964) and *Waldron* v. *British Petroleum Co.*, 38 F. R. D. 170 (S. D. N. Y. 1965) (the decision here appealed from).

We have no question that the order below is appealable. Cities Service was the only party moving for summary judgment, and the court, in conformity with F. R. Civ. P. 54(b), entered an order dismissing the complaint against [fol. 464a] it. Thus the order is in every sense a final disposition of the suit against Cities Service and is appealable. 28 U. S. C. §1291 (1964 ed.); and there is no reason why this appeal should be withheld during the pendency of the suits against the six remaining defendants, which may not be fully disposed of for several years.

Turning to the merits, we are convinced that as the record now stands the grant of summary judgment to the defendant was proper. After nine years in the district

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[1] Plaintiff died after the suit was commenced and his widow as executrix has been substituted as plaintiff. For convenience we refer to plaintiff as if the decedent were still alive.

court it is plain that the plaintiff has not established the existence of any "genuine issue as to any material fact." F. R. Civ. P. 56(c); see, F. R. Civ. P. 56(e). Indeed, the record is barren of any facts which would support the existence of a claim against Cities Service. *Dressler* v. *MV Sandpiper,* 331 F. 2d 130 (2d Cir. 1964).

While Judge Herlands did restrict the scope of discovery we do not think that he abused his discretion. At various times during this litigation the plaintiff advanced several divergent theories of his case by which he sought to link Cities Service to the alleged conspiracy. First it was his theory that Cities Service was "rewarded" by the others for breaking off negotiations with him concerning Iranian oil. The rewards were said to have been a favorable long term contract for the supply of Kuwait crude oil, and a participation share in the Iranian Oil Consortium. Later plaintiff abondoned that theory and adopted the hypothesis that evidence of a sudden loss of interest by Cities Service in Iranian oil during the later months of 1952 proved that Cities Service had joined with the alleged conspirators. Still later, after having discarded that theory, the plaintiff based his action on the claim that Cities Service interfered with his attempts to sell Iranian oil to the Richfield Oil Company.

[fol. 465a] Following extensive discovery by Waldron under the Kuwait and Consortium theories, Cities Service first moved for summary judgment on April 8, 1960, but the trial court adjourned the motion and granted Waldron further limited discovery. Plaintiff examined Cities Service's employee who had been in charge of the Kuwait and Consortium transactions. After this additional discovery had been completed Cities Service renewed its motion on May 13, 1963. The complaint was then amended to drop the specific Kuwait and Consortium charges and the plaintiff proceeded instead upon a more general allegation of conspiracy. The court again adjourned decision on the motion to permit still further discovery through the examination of several principal officers of Cities Service in

order that plaintiff might have an opportunity to look for some support for his "loss of interest" theory. This included discovery of a good deal of additional correspondence. Discovery was also permitted relative to sales of Iranian oil to the Richfield Oil Company. On October 16, 1964 Cities Service again renewed its motion, and the court finally granted summary judgment in September, 1965. Despite these more than ample opportunities to develop a basis for his action, plaintiff has been unable to do so, and has failed to demonstrate the existence of any genuine issue of fact. The court quite properly denied the Rule 54(f) motion for further discovery by which plaintiff sought to engage in still another "fishing expedition" in the hope that he could come up with some tenable cause of action.

We are not unmindful that private anti-trust suits to some extent cast the plaintiff in the role of a "private attorney general" and that such suits are favored, see, e.g., *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322, 329 [fol. 466a] (1955); cf., *J. I. Case Co.* v. *Borak*, 377 U. S. 426, 432-433 (1964). Even so, it is apparent in this case that Waldron was given ample opportunity and scope in his shifting programs of discovery. The plaintiff, as a "private attorney general," may not seek indefinitely, within the period of limitations, to use the process to find evidence in support of a mere "hunch" or "suspicion" of a cause of action.

The judgment of the District Court is affirmed.

[fol. 467a]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present: Hon. Sterry R. Waterman, Hon. Robert P. Anderson, Hon. Wilfred Feinberg, Circuit Judges.

PATRICIA WALDRON, as Executrix of the Last Will and Testament of GERALD B. WALDRON, deceased, Plaintiff-Appellant,

v.

BRITISH PETROLEUM CO. LTD., et al., Defendants,
CITIES SERVICE CO., Defendant-Appellee.

JUDGMENT—June 6, 1966

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to the appellee.

A. Daniel Fusaro, Clerk.

[fol. 468a] [File endorsement omitted]

[fol. 469a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 470a]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1966

PATRICIA WALDRON, etc., Petitioner,

vs.

CITIES SERVICE CO.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—August 29, 1966

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 3, 1966.

John M. Harlan, Associate Justice of the Supreme Court of the United States.

Dated this 29th day of August, 1966.

[fol. 471a]

SUPREME COURT OF THE UNITED STATES

No. 744, October Term, 1966

PATRICIA WALDRON, etc., Petitioner,

v.

CITIES SERVICE CO.

ORDER ALLOWING CERTIORARI—January 16, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 23

PATRICIA WALDRON, ETC., PETITIONER,

vs.

CITIES SERVICE CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 3, 1966
CERTIORARI GRANTED JANUARY 16, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 23

PATRICIA WALDRON, ETC., PETITIONER,

vs.

CITIES SERVICE CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Stipulation dated January 14, 1958, between James A. Bentley, plaintiff, and defendant The Texas Company	23	210
Stipulation dated January 14, 1958, between Richard S. Nelson, plaintiff, and defendants Socony Mobil Oil Co., Inc. and The Texas Company	24	211
Stipulation dated January 14, 1958, between James E. Zoes, plaintiff, and defendant The Texas Company	25	213
Stipulation dated January 14, 1958, between Ray Carter, plaintiff, and defendant The Texas Company	26	214

	Original	Print
Additional record from the United States District Court for the Southern District of New York—Continued		
Stipulation dated March 7, 1958, between all parties	27	215
Stipulation dated March 7, 1958, between Ray Carter, plaintiff, and defendant The Texas Company	30	217
Stipulation dated March 7, 1958, between James E. Zoes, plaintiff, and defendant The Texas Company	31	218
Stipulation dated March 7, 1958, between James A. Bentley, plaintiff, and defendant The Texas Company	32	220
Stipulation dated March 7, 1958, between Richard S. Nelson, plaintiff, and defendant The Texas Company	33	221
Stipulation dated March 26, 1958, between Richard S. Nelson, plaintiff, and defendant Socony Mobil Oil Co., Inc.	34	222
Stipulation dated April 3, 1958, between all parties	36	224
Stipulation dated January 9, 1959, between all parties other than defendant Gulf Oil Corp.	39	226
Stipulation dated March 2, 1959, between all parties	42	228
Stipulation dated April 2, 1959, between all parties	45	230
Stipulation dated May 4, 1959, between all parties	48	232
Stipulation dated May 20, 1959, between all parties	51	234
Stipulation dated July 10, 1959, between all parties	54	236
Stipulation dated September 16, 1959, between all parties	57	238

	Original	Print
Additional record from the United States District Court for the Southern District of New York—Continued		
Stipulation dated November 3, 1959, between Richard S. Nelson, plaintiff, and defendant Socony Mobil Oil Co., Inc.	59	240
Stipulation dated November 11, 1959, between Richard S. Nelson, plaintiff, and defendant Socony Mobil Oil Co., Inc.	60	241
Stipulation dated November 25, 1959, between all parties	61	242
Stipulation dated September 8, 1960, between all parties	64	244
Stipulation dated December 8, 1960, between all parties	67	246
Stipulation dated January 17, 1961, between all parties	70	248
Stipulation dated April 13, 1961, between all parties	73	250
Stipulation dated October 30, 1961, between all parties	76	252
Stipulation dated April 6, 1962, between all parties	79	254
Stipulation dated May 31, 1962, between all parties	81	256
Stipulation dated July 2, 1962, between all parties	84	259
Stipulation dated September 4, 1962, between plaintiff and defendant Cities Service Company	86	261
Stipulation between all parties, other than defendant Cities Service Company, so ordered July 19, 1963	87	262
Stipulation dated July 29, 1963, between defendant Cities Service Company and plaintiff	89	263
Stipulation dated October 11, 1963, between all parties other than defendant Cities Service Company	90	265

	Original	Print
Additional record from the United States District Court for the Southern District of New York—Continued		
Letter from Simon H. Rifkind to the Hon. William B. Herlands, dated November 11, 1963	92	266
Calendar of proceedings, dated January 10, 1964	94	268
Letter from Samuel M. Lane to the Hon. William B. Herlands, dated February 3, 1964	108	281
Letter from Edward N. Costikyan to the Hon. William B. Herlands, dated February 14, 1964	109	282
Letter from Simon H. Rifkind to the Hon. William B. Herlands, dated March 19, 1964	110	283
Stipulation dated August 6, 1964, between all parties other than defendant Cities Service Company	112	285
Stipulation dated November 4, 1964, between all parties other than defendant Cities Service Company, so ordered on November 4, 1964	114	286
Stipulation dated November 4, 1964, between all parties other than defendant Cities Service Company, so ordered on November 5, 1964	117	289
Order dated November 10, 1964	119	290
Memorandum decision dated February 9, 1965	120	291
Letter from Arthur H. Dean to the Hon. William B. Herlands, dated November 24, 1965	122	292
Clerk's certificate	123a	294
Order dated June 1, 1967 together with affidavit and exhibits	124	295

[fol. A]

SUPREME COURT OF THE UNITED STATES

No. 744, October Term, 1966

PATRICIA WALDRON, etc., Petitioner,

v.

CITIES SERVICE CO.

ORDER GRANTING RESPONDENT'S MOTION TO REQUIRE CERTIFICATION OF ADDITIONAL PARTS OF THE RECORD, ETC.—April 24, 1967

On Consideration of the motion of the respondent to require certification of additional parts of the record,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted. The expense of printing such additional parts of the record shall initially be paid by the respondent and ultimately shall abide the judgment of this Court at the conclusion of this case.

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

Time to answer presently expires September 30, 1956.

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed August 13, 1956

It Is Hereby Stipulated and Agreed by and between Gerald B. Waldron, plaintiff, and Gulf Oil Corporation, one of the defendants, in the above entitled and numbered cause as follows:

(1) That the deposition of plaintiff Waldron may be taken by the attorneys for the defendant Gulf Oil Corporation commencing on September 10, 1956, without further notice or order of the Court; and

(2) That the time for the defendant Gulf Oil Corporation to move, answer, plead, or otherwise respond with respect to plaintiff's original complaint filed herein is extended until and including thirty days after the completion of the taking of the deposition of the plaintiff Waldron.

[File endorsement omitted]

Order may be entered at any time on this stipulation without notice to the plaintiff.

Casey, Lane & Mittendorf, 43 Exchange Place, New York 5, New York, Attorneys for Plaintiff, By Samuel M. Lane, A Partner.

Vinson, Elkins, Weems & Searls, Esperson Building, Houston 2, Texas, and Matthew S. Gibson, 17 Battery Pl., New York 4, Attorneys for Defendant Gulf Oil Corporation, By Matthew S. Gibson.

It is so ordered this 10th day of August, 1956, at New York, N. Y.

Lawrence E. Walsh, United States District Judge.

[fol. 2]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

against

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—November 30, 1956

A verbatim extract from the record for November 15, 1956 of the deposition in the case of *Gerald B. Waldron* v. *British Petroleum Co., Ltd., et al.* (Civil Action No. 110-

223) is hereinafter set forth for the purpose of the signatories acknowledging agreement to the terms embodied therein:

"Mr. Lane: It is separately agreed between the plaintiff and defendant *Socony Mobil* that the examination of *Richard S. Nelson* by *Socony Mobil* now scheduled for December 3, 1956 is adjourned to February 4, 1957 without prejudice to the right of the defendant Socony Mobil to insist upon Nelson's examination on the latter date or the right of the plaintiff to oppose Nelson's examination on the latter date or to the rights of any of the other parties with respect to Nelson's examination on or after February 4, 1957."

Samuel M. Lane, Attorney for Plaintiff.

James R. Withrow, Jr., Attorney for Socony Mobil Oil Co.

It is hereby agreed that the undersigned Witness is excused from attending the deposition on December 3, 1956, [fol. 3] as is provided in the subpoena served on him by Mr. John C. O'Donnell on October 22, 1956, on behalf of the Socony Mobil Oil Co., provided he agrees to attend on February 4, 1957, at the offices of the said John C. O'Donnell, 703 Richland Trust Building, in the City of Mansfield, Ohio.

Dated: November 30th, 1956.

Richard S. Nelson.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff.

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 16, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James E. Zoes pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, be and the same hereby is adjourned from January 22, 1957 to April 16, 1957, or to such date prior to April 16, 1957 but after January 22, 1957 as may hereafter be agreed to by the undersigned, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove.

Dated, January 9, 1957.

James E. Zoes.

Casey, Lane & Mittendorf, Attorneys for Plaintiff, Samuel M. Lane.

Oscar John Dorwin, Edmund Burke, Jr., and Kissam & Halpin, Attorneys for Defendant, The Texas Company, By Leo T. Kissam.

So Ordered January 15, 1957.

Sylvester J. Ryan, U.S.D.J.

[File endorsement omitted]

[fol. 5]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 21, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Ray Carter pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, be and the same hereby is adjourned from January 23, 1957 to April 17, 1957, or to such date prior to April 17, 1957 but after January 23, 1957 as may hereafter be agreed to by the undersigned, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove.

Dated, January 9, 1957.

Ray Carter.

Casey, Lane & Mittendorf, Attorneys for Plaintiff, By Samuel M. Lane.

Oscar John Dorwin, Edmund Burke, Jr., and Kissam & Halpin, Attorneys for Defendant, The Texas Company, By Leo T. Kissam.

So Ordered January 21, 1957.

Edward Weinfeld, U.S.D.J.

[File endorsement omitted]

[fol. 6]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 31, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the depositions of Richard S. Nelson pursuant to subpoenas dated October 22, 1956 and November 28, 1956 served by John C. O'Donnell, Esq., on behalf of Socony Mobil Oil Co., Inc., and The Texas Company, respectively, be and the same hereby are adjourned from February 4, 1957 to April 4, 1957 or to such date prior to April 4, 1957 as may hereafter be agreed to by the undersigned, said depositions to be taken at the offices of the said John C. O'Donnell, Esq., 703 Richland Trust Building, in the City of Mansfield, Ohio at 10:30 A.M.

Dated: January 22nd, 1957.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff,
By Samuel M. Lane.

[File endorsement omitted]

Donovan Leisure Newton & Irvine, Attorneys for Defendant Socony Mobil Oil Co., Inc., By James R. Withrow, Jr.

Kissam & Halpin, Attorneys for Defendant The Texas Company, By Leo T. Kissam.

So Ordered: 1/31/57.

Edward Weinfeld, U.S.D.J.

[fol. 7]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed March 28, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the depositions of Richard S. Nelson pursuant to subpoenas dated October 22, 1956 and November 28, 1956 served by John C. O'Donnell, Esq., on behalf of Socony Mobil Oil Co., Inc., and The Texas Company, respectively, heretofore adjourned by stipulation dated January 22, 1957 from February 4, 1957 to April 4, 1957, be and the same hereby are further adjourned to

[File endorsement omitted]

June 3, 1957 or to such date prior to June 3, 1957 as may hereafter be agreed to by the undersigned, said depositions to be taken at the offices of the said John C. O'Donnell, Esq., 703 Richland Trust Building, in the City of Mansfield, Ohio at 10:30 A.M.

Dated: March 20, 1957.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff, By Samuel M. Lane.

Donovan Leisure Newton & Irvine, Attorneys for Defendant Socony Mobil Oil Co., Inc., By James R. Withrow, Jr.

Kissam & Halpin, Attorneys for Defendant The Texas Company, By Leo T. Kissam.

So Ordered March 28, 1957.

G. F. Noonan, U.S.D.J.

[fol. 8]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

[File endorsement omitted]

STIPULATION—Filed March 26, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Ray Carter pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 from January 23, 1957 to April 17, 1957, be and the same hereby is further adjourned to June 6, 1957, or to such date prior to June 6, 1957 but after April 17, 1957 as may hereafter be agreed to by the undersigned, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove.

Dated, March 20, 1957.

Ray Carter.

Casey, Lane & Mittendorf, Attorneys for Plaintiff, By Samuel M. Lane.

Oscar John Dorwin, Edmund Burke, Jr., and Kissam & Halpin, Attorneys for Defendant The Texas Company, By Leo T. Kissam.

So Ordered March 26, 1967.

G. F. Noonan, U.S.D.J.

[fol. 9]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed April 3, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James E. Zoes pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 from January 22, 1957 to April 16, 1957 be and the same hereby is further adjourned to June 5, 1957, or to such date prior to June 5, 1957 but after April 16, 1957 as may hereafter be agreed to by the undersigned, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove.

Dated, March 29, 1957.

[File endorsement omitted]

James E. Zoes.

Casey, Lane & Mittendorf, Attorneys for Plaintiff, By Samuel W. Lane.

Oscar John Dorwin, Edmund Burke, Jr. and Kissam & Halpin, Attorneys for Defendant, The Texas Company, By James H. Halpin.

So Ordered April 2nd 1957.

Thos. F. Murphy, U.S.D.J.

[fol. 10]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed April 2, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James A. Bentley pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 from January 21, 1957 to April 15, 1957 be and the same hereby is further adjourned to June 4, 1957, or to such date prior to June 4, 1957 but after April 15, 1957 as may hereafter

[File endorsement omitted]

be agreed to by the undersigned, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove.

Dated, March 29, 1957.

James A. Bentley.

Casey, Lane & Mittendorf, Attorneys for Plaintiff, By Samuel W. Lane.

Oscar John Dorwin, Edmund Burke, Jr. and Kissam & Halpin, Attorneys for Defendant, The Texas Company, By James H. Halpin.

So Ordered April 2nd 1957.

Thos. F. Murphy, U.S.D.J.

[fol. 11]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed May 22, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the depositions of Richard

[File endorsement omitted]

S. Nelson pursuant to subpoenas dated October 22, 1956 and November 28, 1956 served by John C. O'Donnell, Esq., on behalf of Socony Mobil Oil Co., Inc., and The Texas Company, respectively, heretofore adjourned by stipulation dated January 22, 1957 to April 4, 1957, and by stipulation dated March 20, 1957 to June 3, 1957, be and the same hereby are further adjourned to October 7, 1957 or to such date prior to October 7, 1957 as may hereafter be agreed to by the undersigned, said depositions to be taken at the offices of the said John C. O'Donnell, Esq., 703 Richland Trust Building, in the City of Mansfield, Ohio at 10:30 A.M.

Dated: May 14, 1957.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff, By Samuel M. Lane.

Donovan Leisure Newton & Irvine, Attorneys for Defendant Socony Mobil Oil Co., Inc., By James R. Withrow, Jr.

Kissam & Halpin, Attorneys for Defendant The Texas Company, By Leo T. Kissam.

So Ordered May 22, 1957.

John M. Cashin, U.S.D.J.

[fol. 12]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed May 21, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James A. Bentley pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 15, 1957, and by stipulation dated March 29, 1957 to June 4, 1957, be and the same hereby is further adjourned to October 8, 1957, or to such date prior to October 8, 1957 but after June 4, 1957 as may hereafter be agreed to by the undersigned, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove at 10:30 A.M.

Dated: May 16, 1957.

James A. Bentley.

Casey, Lane & Mittendorf, By S.M.L., Attorneys for for Plaintiff.

[File endorsement omitted]

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered May 20, 1957.

John M. Cashin, U.S.D.J.

[fol. 13]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed May 21, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James E. Zoes pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 16, 1957, and by stipulation dated March 29, 1957 to June 5, 1957, be and the same hereby is further adjourned to October 9, 1957, or to such date prior to October 9, 1957

[File endorsement omitted]

but after June 5, 1957 as may hereafter be agreed to by the undersigned, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove at 10:30 A.M.

Dated: May 16, 1957.

James E. Zoes.

Casey, Lane & Mittendorf, By S.M.L., Attorneys for for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered May 20, 1957.

John M. Cashin, U.S.D.J.

[fol. 14]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed May 21, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Ray Carter pursuant to Notice to Take Deposition dated November

[File endorsement omitted]

14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 17, 1957, and by stipulation dated March 20, 1957 to June 6, 1957, be and the same hereby is further adjourned to October 10, 1957, or to such date prior to October 10, 1957 but after June 6, 1957 as may hereafter be agreed to by the undersigned, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove at 10:30 A.M.

Dated, May 16, 1957.

Ray Carter.

Casey, Lane & Mittendorf, By S.M.L., Attorneys for for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered May 20, 1957.

John M. Cashin, U.S.D.J.

[fol. 15]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed October 2, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James E. Zoes pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 16, 1957, and by stipulation dated March 29, 1957 to June 5, 1957, and by stipulation dated May 16, 1957 to October 9, 1957, be and the same hereby is further adjourned to November 20, 1957, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated: September 25, 1957.

James E. Zoes.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

[File endorsement omitted]

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered: 10/1/57.

G. F. Noonan, U.S.D.J.

[fol. 16]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed October 4, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Ray Carter pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 17, 1957, and by stipulation dated March 20, 1957 to June 6, 1957, and by stipulation dated May 16, 1957 to October 10, 1957, be and the same hereby is further adjourned to November 21, 1957, said deposition to be taken at the same place

[File endorsement omitted]

as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated, September 25, 1957.

Ray Carter.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered October 4, 1957.

G. F. Noonan, U.S.D.J.

[fol. 17]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed October 2, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James A.

[File endorsement omitted]

Bentley pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 15, 1957, and by stipulation dated March 29, 1957 to June 4, 1957, and by stipulation dated May 16, 1957 to October 8, 1957, be and the same hereby is further adjourned to November 19, 1957, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated, September 25, 1957.

James A. Bentley.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered: 10/1/57.

G. F. Noonan, U.S.D.J.

[fol. 18]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed October 2, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the depositions of Richard S. Nelson pursuant to subpoenas dated October 22, 1956 and November 28, 1956 served by John C. O'Donnell, Esq., on behalf of Socony Mobil Oil Co., Inc., and The Texas Company, respectively, heretofore adjourned by stipulation dated January 22, 1957 to April 4, 1957, and by stipulation dated March 20, 1957 to June 3, 1957, and by stipulation dated May 14, 1957 to October 7, 1957, be and the same hereby are further adjourned to November 18, 1957, said depositions to be taken at the office of the Clerk of the United States District Court, Southern District of New York, Room 601, Federal Court House, Foley Square, New York, N.Y. commencing at 10:30 A.M.

[File endorsement omitted]

Dated: September 25, 1957.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Donovan Leisure Newton & Irvine, Attorneys for Defendant Socony Mobil Oil Co., Inc., By James R. Withrow, Jr.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered: 10/1/57.

G. F. Noonan, U.S.D.J.

[fol. 19]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed November 13, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James A.

[File endorsement omitted]

Bentley pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 15, 1957, and by stipulation dated March 29, 1957 to June 4, 1957, and by stipulation dated May 16, 1957 to October 8, 1957, and by stipulation dated September 25, 1957 to November 19, 1957, be and the same hereby is further adjourned to January 21, 1958 said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated, November 12, 1957.

James A. Bentley.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant, The Texas Company.

So Ordered November 13, 1957.

J. R. Kaufman, U.S.D.J.

[fol. 20]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed November 13, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the depositions of Richard S. Nelson pursuant to subpoenas dated October 22, 1956 and November 28, 1956 served by John C. O'Donnell, Esq., on behalf of Socony Mobil Oil Co., Inc., and The Texas Company, respectively, heretofore adjourned by stipulation dated January 22, 1957 to April 4, 1957, and by stipulation dated March 20, 1957 to June 3, 1957, and by stipulation dated May 14, 1957 to October 7, 1957, and by stipulation dated September 25, 1957 to November 18, 1957, be and the same hereby are further adjourned to January 20, 1958 said depositions to be taken at the office of the Clerk of the United States District Court, Southern District of New York, Room 601, Federal Court House, Foley Square, New York, N. Y. commencing at 10:30 A.M.

[File endorsement omitted]

Dated: November 12, 1957.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Donovan Leisure Newton & Irvine, Attorneys for Defendant Socony Mobil Oil Co., Inc., By J. R. Withrow, Jr.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered November 13, 1957.

J. R. Kaufman, U.S.D.J.

[fol. 21]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed November 13, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James E. Zoes pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November

16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 16, 1957, and by stipulation dated March 29, 1957 to June 5, 1957, and by stipulation dated May 16, 1957 to October 9, 1957, and by stipulation dated September 25, 1957 to November 20, 1957, be and the same hereby is further adjourned to January 22, 1958 said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated: November 12, 1957.

James E. Zoes.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered November 13, 1957.

J. R. Kaufman, U.S.D.J.

[fol. 22]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

[File endorsement omitted]

STIPULATION—Filed November 14, 1957

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Ray Carter pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 17, 1957, and by stipulation dated March 20, 1957 to June 6, 1957, and by stipulation dated May 16, 1957 to October 10, 1957, and by stipulation dated September 25, 1957 to November 21, 1957, be and the same hereby is further adjourned to January 23, 1958 said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated, November 12, 1957.

Ray Carter.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered November 14, 1957.

J. R. Kaufman, U.S.D.J.

[fol. 23]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 21, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James A. Bentley pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 15, 1957, and by stipulation dated March 29, 1957 to June 4, 1957, and by stipulation dated May 16, 1957 to October 8, 1957, and by stipulation dated September 25, 1957 to November 19, 1957, and by stipulation dated November 12, 1957 to January 21, 1958, be and the same hereby is further adjourned to April 14, 1958, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

[File endorsement omitted]

Dated, January 14, 1958.

James A. Bentley.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered January 20th 1958.

William B. Herlands, U.S.D.J.

[fol. 24]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 17, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the depositions of Richard S. Nelson pursuant to subpoenas dated October 22, 1956 and November 28, 1956 served by John C. O'Donnell, Esq., on behalf of Socony Mobil Oil Co., Inc., and The Texas Company, respectively, heretofore adjourned by stipula-

tion dated January 22, 1957 to April 4, 1957, and by stipulation dated March 20, 1957 to June 3, 1957, and by stipulation dated May 14, 1957 to October 7, 1957, and by stipulation dated September 25, 1957 to November 18, 1957, and by stipulation dated November 12, 1957 to January 20, 1958, be and the same hereby are further adjourned to April 7, 1958, said depositions to be taken at the office of the Clerk of the United States District Court, Southern District of New York, Room 601, Federal Court House, Foley Square, New York, N.Y. commencing at 10:30 A.M.

Dated: January 14, 1958.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Donovan Leisure Newton & Irvine, Attorneys for Defendant Socony Mobil Oil Co., Inc., By James R. Withrow, Jr.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered January 16, 1958.

Sidney Sugarman, U.S.D.J.

[fol. 25]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 20, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James E. Zoes pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 9, 1957 to April 16, 1957, and by stipulation dated March 29, 1957 to June 5, 1957, and by stipulation dated May 16, 1957 to October 9, 1957, and by stipulation dated September 25, 1957 to November 20, 1957, and by stipulation dated November 12, 1957 to January 22, 1958, be and the same hereby is further adjourned to April 21, 1958, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

[File endorsement omitted]

Dated: January 14, 1958.

James E. Zoes.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered January 17, 1958.

Sidney Sugarman, U.S.D.J.

[fol. 26]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 22, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Ray Carter pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned

[File endorsement omitted]

by stipulation dated January 9, 1957 to April 17, 1957, and by stipulation dated March 20, 1957 to June 6, 1957, and by stipulation dated May 16, 1957 to October 10, 1957, and by stipulation dated September 25, 1957 to November 21, 1957, and by stipulation dated November 12, 1957 to January 23, 1958, be and the same hereby is further adjourned to April 28, 1958, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated, January 14, 1958.

Ray Carter.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered January 21, 1958.

William B. Herlands, U.S.D.J.

[fol. 27]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

[File endorsement omitted]

STIPULATION—Filed March 10, 1958

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the resumption of the examination of plaintiff Waldron by defendant Standard Oil Company (New Jersey) and scheduled to begin on March 10, 1958, shall begin on April 7, 1958 at the same time and place.

Dated: New York, N.Y.
March 7, 1958.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff.

Milton Pollack, 111 Broadway, New York 5, N.Y., Attorney for Defendant British Petroleum Company, Limited.

Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N.Y. and Henry [fol. 28] L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N.Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Matthew S. Gibson, 17 Battery Place, New York 4, N.Y. and Vinson, Elkins, Weems & Searls, Esperson Building, Houston 2, Texas, Attorneys for Defendant Gulf Oil Corporation by Matthew S. Gibson.

Donovan Leisure Newton & Irvine, by James R. Withrow, Jr., Two Wall Street, New York 5, N.Y. and Dorr, Hand, Whittaker & Peet, 61 Broadway, New York 6, N.Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

[fol. 29] Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company of California.

Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Kissam & Halpin, 120 Broadway, New York 5, N.Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42nd Street, New York 17, N.Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So Ordered March 10, 1958.

E. J. Dimock, U.S.D.J.

[fol. 30]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed March 18, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Ray Carter pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16,

[File endorsement omitted]

1956, served by The Texas Company, heretofore adjourned by stipulation dated January 14, 1958 to April 28, 1958, be and the same hereby is further adjourned to a date in conformity with the Order of United States District Judge Herlands signed February 11, 1958 in this action, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated, March 7, 1958.

Ray Carter.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered March 18th 1958.

G. F. Noonan, U.S.D.J.

[fol. 31]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

[File endorsement omitted]

STIPULATION—Filed March 18, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James E. Zoes pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 14, 1958 to April 21, 1958, be and the same hereby is further adjourned to a date in conformity with the Order of United States District Judge Herlands signed February 11, 1958 in this action, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

Dated, March 7, 1958.

James E. Zoes.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered March 18th 1958.

G. F. Noonan, U.S.D.J.

[fol. 32]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed March 18, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of James A. Bentley pursuant to Notice to Take Deposition dated November 14, 1956 and Subpoena Duces Tecum dated November 16, 1956, served by The Texas Company, heretofore adjourned by stipulation dated January 14, 1958 to April 14, 1958, be and the same hereby is further adjourned to a date in conformity with the Order of United States District Judge Herlands signed February 11, 1958 in this action, said deposition to be taken at the same place as specified in the Notice to Take Deposition and Subpoena Duces Tecum referred to hereinabove commencing at 10:30 A.M.

[File endorsement omitted]

Dated, March 7, 1958.

James A. Bentley.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered March 18th 1958.

G. F. Noonan, U.S.D.J.

[fol. 33]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed March 18, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Richard S. Nelson pursuant to Notice to Take Deposition dated November 16, 1956, and Subpoena Duces Tecum dated November 28, 1956 served by John C. O'Donnell, Esq., on

[File endorsement omitted]

behalf of The Texas Company, heretofore adjourned by stipulation dated January 14, 1958 to April 7, 1958, be and the same hereby is further adjourned to a date in conformity with the Order of United States District Judge Herlands signed February 11, 1958 in this action, said deposition to be taken at the office of the Clerk of the United States District Court, Southern District of New York, Room 601, Federal Court House, Foley Square, New York, N.Y. commencing at 10:30 A.M.

Dated, March 7, 1958.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Kissam & Halpin, Oscar John Dorwin and Edmund Burke, Jr., Attorneys for Defendant The Texas Company.

So Ordered March 18th 1958.

G. F. Noonan, U.S.D.J.

[fol. 34]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

[File endorsement omitted]

STIPULATION—Filed March 29, 1958

It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Richard S. Nelson pursuant to the subpoena duces tecum dated October 17, 1956 and served on October 22, 1956 by John C. O'Donnell, Esq. on behalf of Socony Mobil Oil Co., Inc., heretofore adjourned by successive stipulations to April 7, 1958, be and the same hereby is further adjourned to a date in conformity with the order of United States District Judge Herlands signed February 11, 1958 in this action, or until such other date as may be agreeable to and between the undersigned, said deposition to be taken at the office of the Clerk of the United States District Court, Southern District of New York, Room 601, Federal Court House, Foley Square, New York, N. Y., commencing at 10:30 A.M.

Dated: March 26, 1958.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff, By Samuel W. Lane.

[fol. 35] Donovan Leisure Newton & Irvine, Attorneys for Defendant Socony Mobil Oil Co., Inc., By James R. Withrow, Jr.

So Ordered March 28, 1958.

G. F. Noonan, U.S.D.J.

[fol. 36]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed April 7, 1958

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the resumption of the examination of plaintiff Waldron by defendant Standard Oil Company (New Jersey) and now scheduled to begin on April 7, 1958, shall begin on September 15, 1958 at the same time and place.

Dated: New York, N. Y.
April 3, 1958.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N. Y., Attorneys for Plaintiff.

Milton Pollack, 111 Broadway, New York 5, N. Y., Attorney for Defendant British Petroleum Company, Limited.

[File endorsement omitted]

[fol. 37] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N. Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N. Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Matthew S. Gibson, 17 Battery Place, New York 4, N. Y. and Vinson, Elkins, Weems & Searls, Esperson Building, Houston 2, Texas, Attorneys for Defendant Gulf Oil Corporation, by Matthew S. Gibson.

Donovan Leisure Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Peet, 61 Broadway, New York 6, N. Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

[fol. 38] Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company of California.

Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Kissam & Halpin, 120 Broadway, New York 5, N. Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42nd Street, New York 17, N. Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So Ordered April 4th, 1958.

Fr. vP Bryan, U.S.D.J.

[fol. 39]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 14, 1959

It Is Stipulated among the parties hereto, that the resumption of the deposition program set forth in the Order herein entered February 13, 1958, now scheduled to occur on January 19, 1959 with the examination of plaintiff Waldron by defendant Standard Oil Company of California shall be adjourned to February 24, 1959 on which date the said examination shall begin, at the same time and place.

Dated: New York, N.Y.
January 9, 1959.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, New York, Attorneys for Plaintiff.

Milton Pollack, 111 Broadway, New York 5, New York, Attorney for Defendant British Petroleum Company, Limited.

[fol. 40] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N.Y. and

[File endorsement omitted]

Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N.Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Matthew S. Gibson, 17 Battery Place, New York 4, N.Y. and Vinson, Elkins, Weems & Searls, Esperson Building, Houston 2, Texas, Attorneys for Defendant Gulf Oil Corporation.

Donovan Leisure Newton & Irvine, Two Wall Street, New York 5, N.Y. and Dorr, Hand, Whittaker & Peet, 61 Broadway, New York 6, N.Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

[fol. 41] Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company of California.

Sullivan & Cromwell, 48 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Kissam & Halpin, 120 Broadway, New York 5, N.Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42nd Street, New York 17, N.Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So Ordered January 13, 1959.

John F. X. Murphy, U.S.D.J.

[fol. 42]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed March 4, 1959

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the resumption of the examination of plaintiff Waldron by defendant Cities Service Co., and now scheduled to begin on March 2, 1959, shall begin on April 6, 1959, at the same time and place.

Dated: New York, N.Y.
Mareh 2, 1959.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff.

Milton Pollack, 111 Broadway, New York 5, N.Y., Attorney for Defendant British Petroleum Company, Limited.

[fol. 43] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N.Y. and

[File endorsement omitted]

Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N.Y., Attorneys for defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Frederick L. Scofield, 17 Battery Place, New York 4, N.Y. and Vinson, Elkins, Weems & Searls, Esperson Building, Houston 2, Texas, Attorneys for Defendant Gulf Oil Corporation, by Frederick L. Scofield.

Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N.Y. and Dorr, Hand, Whittaker & Peet, 61 Broadway, New York 6, N.Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

[fol. 44] Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company of California.

Kissam & Halpin, 120 Broadway, New York 5, N.Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42nd Street, New York 17, N.Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So Ordered March 4, 1959.

David N. Edelstein, U.S.D.J.

[fol. 45]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed April 6, 1959

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the resumption of the examination of plaintiff Waldron by defendant Cities Service Co., and now scheduled to begin on April 6, 1959, shall begin on May 6, 1959, at the same time and place.

Dated: New York, N.Y.
April 2, 1959.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff.

Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N. Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, [fol. 46] New York 5, N. Y., Attorneys for defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

[File endorsement omitted]

Milton Pollack, 111 Broadway, New York 5, N. Y., Attorney for defendant British Petroleum Company, Limited.

Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for defendant Standard Oil Company (New Jersey).

Frederick L. Scofield, 17 Battery Place, New York 4, N. Y. and Vinson, Elkins, Weems & Searls, Esperson Building, Houston 2, Texas, Attorneys for defendant Gulf Oil Corporation, by Frederick L. Scofield.

[fol. 47] Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N. Y., Attorneys for defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N. Y., Attorneys for defendant Standard Oil Company of California.

Kissam & Halpin, 120 Broadway, New York 5, N. Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42 Street, New York 17, N. Y., Attorneys for defendant The Texas Company, by Kissam & Halpin.

So Ordered April 6th, 1959.

Edmund L. Palmieri, U.S.D.J.

[fol. 48]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed May 6, 1959

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the resumption of the examination of plaintiff Waldron by defendant Cities Service Co., and now scheduled to begin on May 6, 1959, shall begin on May 20, 1959, at the same time and place.

Dated: New York, N. Y.
May 4, 1959.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N. Y., Attorneys for Plaintiff.

Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N. Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, [fol. 49] New York 5, N. Y., Attorneys for defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

[File endorsement omitted]

Milton Pollack, 111 Broadway, New York 5; N. Y., Attorney for defendant British Petroleum Company, Limited.

Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for defendant Standard Oil Company (New Jersey).

Frederick L. Scofield, 17 Battery Place, New York 4, N. Y. and Vinson, Elkins, Weems & Searls, Esperson Building, Houston 2, Texas, Attorneys for defendant Gulf Oil Corporation, by Frederick L. Scofield.

[fol. 50] Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N. Y., Attorneys for defendant Socony Mobil Oil Co., Inc..

Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N. Y., Attorneys for defendant Standard Oil Company of California.

Kissam & Halpin, 120 Broadway, New York 5, N. Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42 Street, New York 17, N. Y., Attorneys for defendant The Texas Company, by Kissam & Halpin.

So Ordered May 6th, 1959.

Richard H. Levet, U.S.D.J.

[fol. 51]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed May 27, 1959

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the resumption of the examination of plaintiff Waldron by defendant Cities Service Co., and now scheduled to begin on May 20, 1959, shall begin on September 21, 1959, at the same time and place.

Dated: New York, N.Y.
May 20, 1959.

So Ordered, Edelstein, J.

Filed May 27, 1959.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff.

Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N.Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N.Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

[fol. 52] Milton Pollack, 111 Broadway, New York 5, N.Y., Attorney for Defendant British Petroleum Company, Limited.

Sullivan & Cromwell, 48 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Frederick L. Scofield, 17 Battery Place, New York 4, N.Y. and Vinson, Elkins, Weems & Searls, Esperson Building, Houston 2, Texas, Attorneys for Defendant Gulf Oil Corporation, by Frederick L. Scofield.

Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N.Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N.Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company of California.

[fol. 53] Kissam & Halpin, 120 Broadway, New York 5, N.Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42nd Street, New York 17, N.Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So Ordered May , 1959.

....., U.S.D.J.

[fol. 54]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed July 17, 1959

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the resumption of the examination of plaintiff Waldron by defendant Cities Service Co., and now scheduled to begin on September 9, 1959, shall begin on September 21, 1959, at the same time and place.

Dated: New York, N. Y.
July 10, 1959.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N. Y., Attorneys for Plaintiff.

Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N. Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N. Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

[fol. 55] Milton Pollack, 111 Broadway, New York 5, N. Y., Attorney for Defendant British Petroleum Company, Limited.

Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N. Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company of California.

[fol. 56] Kissam & Halpin, 120 Broadway, New York 5, N. Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42nd Street, New York 17, N. Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So Ordered July 17th, 1959.

Archie O. Dawson, U.S.D.J.

[fol. 57]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223.

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed September 21, 1959

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the resumption of the examination of plaintiff Waldron by defendant Cities Service Co., and now scheduled to begin on September 21, 1959, shall begin on October 26, 1959, at the same time and place.

Dated: New York, N.Y.
September 16, 1959.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff.

Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N.Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N.Y., Attorneys for Defendant Cities

[File endorsement omitted]

Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

[fol. 58] Milton Pollack, 111 Broadway, New York 5, N.Y., Attorney for Defendant British Petroleum Company, Limited.

Sullivan & Cromwell, 48 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N.Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N.Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company of California.

Kissam & Halpin, 120 Broadway, New York 5, N.Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42nd Street, New York 17, N.Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So Ordered September 21st, 1959.

Sidney Sugarman, U.S.D.J.

[fol. 59]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—November 3, 1959

At the request of Richard S. Nelson, It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Richard S. Nelson pursuant to the subpoena duces tecum dated October 17, 1956 and served on October 22, 1956 by John C. O'Donnell, Esq., on behalf of Socony Mobil Oil Co., Inc., heretofore adjourned on March 26, 1958, to "a date in conformity with the order of United States District Judge Herlands signed February 11, 1958 in this action," be and the same hereby is further adjourned to November 17, 1959, said deposition to be taken at the United States District Court, Southern District of New York, Room 611A, Federal Court House, Foley Square, New York, N. Y., commencing at 10:30 A.M.

Dated: November 3, 1959.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff,
By Samuel M. Lane.

[fol. 60]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed December 4, 1959

At the request of Richard S. Nelson, It Is Hereby Stipulated, Consented and Agreed by and between the undersigned that the deposition of Richard S. Nelson pursuant to the subpoena duces tecum dated October 17, 1956 and served on October 22, 1956 by John C. O'Donnell, Esq., on behalf of Socony Mobil Oil Co., Inc., heretofore adjourned on November 3, 1959 to November 17, 1959, be and the same hereby is further adjourned to January 11, 1960, said deposition to be taken at the United States District Court, Southern District of New York, Room 611A, U. S. Court House, Foley Square, New York, N. Y., commencing at 10:30 A.M.

Dated: November 11, 1959.

Richard S. Nelson.

Casey, Lane & Mittendorf, Attorneys for Plaintiff,
By Samuel M. Lane.

[File endorsement omitted]

Donovan Leisure Newton & Irvine, Attorneys for Defendant Socony Mobil Oil Co., Inc., By James R. Withrow, Jr.

Dorr, Hand, Whittaker & Watson, Attorneys for Defendant Socony Mobil Oil Co., Inc., By G. H. Dorr.

So Ordered: 12/2/59.

William B. Herlands, U.S.D.J.

[fol. 61]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed December 8, 1959

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, scheduled to continue with the deposition of Richard S. Nelson, shall continue on January 11, 1960.

Dated: New York, N. Y., November 25, 1959.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiffs.

[File endorsement omitted]

Milton Pollack, 111 Broadway, New York 5, N. Y., Attorney for Defendant British Petroleum Company, Limited.

[fol. 62] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N. Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N. Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Donovan Leisure Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N. Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company of California.

[fol. 63] Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Kissam & Halpin, 120 Broadway, New York 5, N. Y. and O. John Dorwin and Edmund Burke, Jr., 135 East 42nd Street, New York 17, N. Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So Ordered: 12/8/59.

Sidney Sugarman, U.S.D.J.

[fol. 64]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed September 12, 1960

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, commencing with the examination of Richard S. Nelson by defendant Cities Service Company, and now scheduled to begin on September 13, 1960, shall begin on October 11, 1960, at the offices of Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue (12th floor), New York 22, N.Y., at a time to be agreed upon by the parties.

Dated: New York, N.Y., September 8, 1960.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff.

[fol. 65] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N. Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N. Y., Attorneys for Defen-

[File endorsement omitted]

dant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Donovan Leisure Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N. Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 63 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company of California.

Milton Pollack, 111 Broadway, New York 5, N. Y., Attorney for Defendant British Petroleum Company, Limited.

[fol. 66] Sullivan & Cromwell, 48 Wall Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Kissam & Halpin, 120 Broadway, New York 5, N.Y., and O. John Dorwin and Amzy B. Steed, 135 East 42nd Street, New York 17, N.Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So ordered: 9/12/60.

Richard H. Levet, U.S.D.J.

[fol. 67]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed December 9, 1960

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, scheduled to continue with the deposition of James A. Bentley, shall continue at 10:30 a.m. on January 30, 1961 at the offices of Kissam & Halpin, 120 Broadway, New York, 5, N.Y.

Dated: New York, N.Y., December 8, 1960.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff and James A. Bentley.

Milton Pollack, 111 Broadway, New York 5, N. Y., Attorney for Defendant British Petroleum Company, Limited.

[fol. 68] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N. Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine

[File endorsement omitted]

Street, New York 5, N. Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N. Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company of California.

[fol. 69] Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Kissam & Halpin, 120 Broadway, New York 5, N. Y. and O. John Dorwin and Amzy B. Steed, 135 East 42nd Street, New York 17, N. Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So ordered: 12/9/60.

E. J. Dimock, U.S.D.J.

[fol. 70]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed January 18, 1961

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, scheduled to continue with the deposition of James A. Bentley, and now scheduled to begin on January 30, 1961, shall begin on April 17, 1961 at the same time and place.

Dated: New York, N. Y., January 17, 1961.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff and James A. Bentley.

Milton Pollack, 111 Broadway, New York 5, N. Y., Attorney for Defendant British Petroleum Company, Limited.

[fol. 71] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N. Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine

[File endorsement omitted]

Street, New York 5, N. Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N. Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company of California.

[fol. 72] Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Kissam & Halpin, 120 Broadway, New York 5, N. Y. and O. John Dorwin and Amzy B. Steed, 135 East 42nd Street, New York 17, N. Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So ordered: 1/18/61.

David N. Edelstein, U.S.D.J.

[fol. 73]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed April 14, 1961

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, scheduled to continue with the deposition of James A. Bentley, and now scheduled to begin on April 17, 1961, shall begin on June 19, 1961 at the same time and place.

Dated: New York, N.Y., April 13, 1961.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y., Attorneys for Plaintiff and James A. Bentley.

Milton Pollack, 111 Broadway, New York 5, N. Y., Attorney for Defendant British Petroleum Company, Limited.

[fol. 74] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N.Y. and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N.Y., Attorneys for Defen-

[File endorsement omitted]

dant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N. Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company of California.

[fol. 75] Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Kissam & Halpin, 120 Broadway, New York 5, N. Y. and O. John Dorwin and Amzy B. Steed, 135 East 42nd Street, New York 17, N. Y., Attorneys for Defendant The Texas Company, by Kissam & Halpin.

So ordered: 4/14/61.

Edmund L. Palmieri, U.S.D.J.

[fol. 76]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed November 3, 1961

It Is Stipulated among the parties hereto that the deposition program set forth in the order herein entered February 13, 1958, scheduled to continue with the deposition of James A. Bentley on October 30, 1961, shall continue at 10:30 A.M. on November 9, 1961 at the offices of Donovan Leisure Newton & Irvine, 2 Wall Street, New York 5, N. Y.

Dated: New York, N. Y., October 30, 1961.

Putney, Twombly, Hall & Skidmore, 165 Broadway, New York 6, N. Y., Attorneys for James A. Bentley.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N. Y., Attorneys for Plaintiff.

Milton Pollack, 111 Broadway, New York 6, N. Y., Attorney for Defendant British Petroleum Company, Limited.

[File endorsement omitted]

[fol. 77] Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Avenue, New York 22, N.Y., and Henry L. O'Brien and Park Holland, Jr., 70 Pine Street, New York 5, N.Y., Attorneys for Defendant Cities Service Company, by Paul, Weiss, Rifkind, Wharton & Garrison.

Donovan, Leisure, Newton & Irvine, Two Wall Street, New York 5, N.Y. and Dorr, Hand, Whittaker & Watson, 61 Broadway, New York 6, N.Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, N.Y., Attorneys for Defendant Standard Oil Company of California.

[fol. 78] Sullivan & Cromwell, 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Amzy B. Steed, 135 East 42nd Street, New York 17, N.Y., Attorney for Defendant Texaco Inc. (sued herein as The Texas Co.).

So Ordered: 11/2/61.

William B. Herlands, U.S.D.J.

[fol. 79]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORPORATION, SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—April 6, 1962

It Is Stipulated among the parties hereto that the deposition program set forth in the Order herein entered February 13, 1958 shall be modified in the following respects:

1. The deposition of Addison Brown shall be taken prior to the deposition of Ray Carter.

2. The deposition of Addison Brown shall be taken at Naples, Florida, during the week of April 23, 1962 and shall be concluded by April 28, 1962.

3. The deposition of Ray Carter shall be taken, if at all, either in Phoenix, Arizona or New York City unless otherwise stipulated between the parties hereto, at some time during the month of May upon two weeks notice.

4. The deposition program shall be concluded in its entirety on or before May 31, 1962.

It Is Further Stipulated that the time of each of the defendants to answer or make any motions with respect

[fol. 80] to the complaint is extended until June 30, 1962, unless otherwise agreed to among the parties.

Dated: New York, New York, April 6, 1962.

Donovan Leisure Newton & Irvine, Esqs., Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, Esqs., 61 Broadway, New York 6, N. Y., Attorneys for Defendant, Socony Mobil Oil Co., Inc.

Cahill, Gordon, Reindel & Ohl, Esqs., 63 Wall Street, New York 5, N. Y., Attorneys for Defendant, Standard Oil Company of California.

Sullivan & Cromwell, Esqs., 48 Wall Street, New York 5, N. Y., Attorneys for Defendant, Standard Oil Company (New Jersey).

Milton Pollack, Esq., 111 Broadway, New York 5 N. Y., Attorney for Defendant, British Petroleum Company, Limited.

Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., 575 Madison Avenue, New York 22, New York.

Amzy B. Steed, Esq., 135 East 42d Street, New York 17, N. Y., Attorney for Defendant, Texaco, Inc. and

Casey Lane & Mittendorf, Esqs., 26 Broadway, New York 4, N. Y., Attorneys for Plaintiff.

So Ordered: 4/9/62.

William B. Herlands, U.S.D.J.

[fol. 81]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), and THE TEXAS CO., Defendants.

STIPULATION—Filed June 1, 1962

A stipulation dated April 6, 1962 having been entered into by all parties and having been so ordered by the Court on April 9, 1962 which, among other things, set the time of the defendants to answer or make motions with respect to the complaint herein at June 30, 1962, unless otherwise agreed to among the parties, and

Certain of the defendants, by their attorneys, having indicated an intention to address motions to the complaint prior to answering, and

Plaintiff, by his attorneys, having indicated an intention to seek amendment of the complaint in an effort to save the Court and all parties unnecessary work,

It Is Stipulated between the parties by their undersigned attorneys:

1. On or before June 15, 1962, the attorneys for plaintiff shall submit plaintiff's proposed amended complaint to the respective attorneys for each of the defendants.

[File endorsement omitted]

2. On or before June 30, 1962, the respective attorneys for each of the defendants will indicate to the attorneys for plaintiff whether or not they then intend to oppose a motion [fol. 82] to amend the original complaint as proposed. This shall be without prejudice to, and there are hereby expressly reserved, the rights of each of the defendants later to object to, or move against, all or any portions of the original complaint or of any amended complaint.

3. On or before July 31, 1962, plaintiff shall move to amend the complaint, and shall make such motion returnable on September 24, 1962 or as soon thereafter as counsel can be heard. Any papers in opposition to such motion shall be served on the attorneys for plaintiff not less than fourteen days before the return date of said motion. Any papers filed in reply by the attorneys for plaintiff shall be served on the respective attorneys for each of the defendants not less than four days before the return day of said motion.

4. Defendants, except defendant Cities Service Company, shall have 30 days after entry of an order by the Court on plaintiff's motion to amend within which to answer or move with respect to the complaint or amended complaint, unless otherwise ordered.

5. With respect to defendant Cities Service Company:

(a) this stipulation shall not be deemed to amend or modify any provision of the Order of this Court dated May 3, 1961, and shall be without prejudice to the rights and obligations of the parties pursuant to said Order; and

(b) the time of defendant Cities Service Company to further move or answer with respect to the complaint or amended complaint shall be extended until 30 days following the determination by the Court of defendant Cities Service Company's motion for summary judgment, or until the date [fol. 83] set forth in this stipulation for the answers or motions of all other defendants, whichever date shall be later.

Dated: New York, New York, May , 1962.

Sullivan & Cromwell, Esqs., 48 Wall Street, New York 5, N. Y., Attorneys for Defendant, Standard Oil Company (New Jersey).

Donovan Leisure Newton & Irvine, Esqs., Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, Esqs., 61 Broadway, New York 6, N. Y., Attorneys for Defendant, Socony Mobil Oil Co., Inc.

Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., 575 Madison Avenue, New York 22, N. Y., Attorneys for Defendant, Cities Service Co.

Cahill, Gordon, Reindel & Ohl, Esqs., 63 Wall Street, New York 5, N. Y., Attorneys for Defendant, Standard Oil Company of California.

Milton Pollack, Esq., 111 Broadway, New York 5, N. Y., Attorney for Defendant, British Petroleum Company, Limited.

Amzy B. Steed, Esq., 135 East 42nd Street, New York 17, N. Y., Attorney for Defendant, Texaco, Inc.

Casey Lane & Mittendorf, Esqs., 26 Broadway, New York 4, N. Y., Attorneys for Plaintiff.

So Ordered: 5/31/62.

William B. Herlands, U.S.D.J.

[fol. 84]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION—Filed July 6, 1962

At the request of counsel for plaintiff, it is hereby stipulated that plaintiff's examination of Cities Service provided by this Court's order dated May 3, 1961 and presently scheduled for July 2, 1962 is adjourned until September 10, 1962; and further

At the request of counsel for Cities Service it is hereby stipulated that the program for amending the complaint set forth in the stipulation between the parties dated May 31, 1962 is hereby stayed in all respects pending completion of plaintiff's examination of Cities Service.

Dated: New York, New York, July 2nd, 1962.

Sullivan & Cromwell, Esqs., 48 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company (New Jersey).

Cahill, Gordon, Reindel & Ohl, Esqs., 63 Wall Street, New York 5, N. Y., Attorneys for Defendant Standard Oil Company of California.

[File endorsement omitted]

[fol. 85] Donovan Leisure Newton & Irvine, Esqs., Two Wall Street, New York 5, N. Y. and Dorr, Hand, Whittaker & Watson, Esqs., 61 Broadway, New York 6, N. Y., Attorneys for Defendant Socony Mobil Oil Co., Inc.

Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., 572 Madison Avenue, New York 22, N. Y., Attorneys for Defendant Cities Service Co.

Milton Pollack, Esq., 111 Broadway, New York 5, N. Y., Attorney for Defendant British Petroleum Company, Limited.

Amzy B. Steed, Esq., 135 East 42nd Street, New York 17, N. Y., Attorney for Defendant Texaco, Inc.

Casey Lane & Mittendorf, Esqs., 26 Broadway, New York 4, N. Y., Attorneys for Plaintiff.

So Ordered: 7/5/62.

Edmund L. Palmieri, U.S.D.J. J.A.M.

[fol. 86]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., GULF OIL CORP., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), THE TEXAS CO., Defendants.

STIPULATION OF ADJOURNMENT—Filed September 7, 1962

It is hereby stipulated that plaintiff's examination of Cities Service presently scheduled for September 10, 1962, is adjourned until October 10, 1962.

Dated: New York, New York, September 4, 1962.

Casey, Lane & Mittendorf, 26 Broadway, New York 4, N.Y. (Wh 3-3000), Attorneys for Plaintiff.

Paul, Weiss, Rifkind, Wharton & Garrison, 575 Madison Ave., New York 22, N.Y. (Mu 8-5600), Attorneys for Defendant Cities Service Co.

So Ordered: 9/6/62.

Irving Ben Cooper, U.S.D.J., J.A.M.

[File endorsement omitted]

[fol. 87]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civ. No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO, INC., Defendants.

STIPULATION—Filed July 19, 1963

It Is Hereby Stipulated and Agreed by and between the attorneys for plaintiff and the attorneys for the defendants indicated below that the time for each of said defendants to answer or to make any motion addressed to the amended complaint herein be and the same hereby is extended from July 25. 1963 to and including October 15, 1963. It is understood that the motions referred to in this stipulation do not include any motions directed against plaintiff's right to file an amended complaint.

Casey, Lane & Mittendorf, Esqs., Attorneys for Plaintiff, By Samuel M. Lane.

Milton Pollack, Esq., Attorney for Defendant, British Petroleum Co., Ltd., By Milton Pollack.

[fol. 88] Donovan Leisure Newton & Irvine, Esqs., By James R. Withraw, Jr., per James M. MacNee, III and Mudge, Stern, Baldwin & Todd, Esqs.,

[File endorsement omitted]

Attorneys for Defendant, Socony Mobil Oil Co., Inc., By Goldthwaite H. Dorr.

Sullivan & Cromwell, Esqs., Attorneys for Defendant, Standard Oil Company (New Jersey), By George A. Scholze.

Cahill, Gordon, Reindel & Ohl, Esqs., Attorneys for Defendant, Standard Oil Co. of California, By William M. Sayre.

James O. Sullivan, Esq., Attorney for Defendant, Texaco, Inc., By James O. Sullivan.

So Ordered: 7/19/63.

Lloyd F. MacMahon, U.S.D.J., J.A.M.

[fol. 89]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO, INC., Defendants.

STIPULATION AND ORDER—Filed July 30, 1963

It Is Hereby Stipulated, Consented to, and Agreed, by and between the undersigned attorneys for plaintiff and defendant Cities Service Company, that if the pending

[File endorsement omitted]

motion by Cities Service Company for summary judgment dismissing the complaint herein is denied, then defendant Cities Service Company shall have thirty (30) days after the determination of said motion in which to file its answer.

Dated: New York, N. Y., July 29, 1963.

Paul, Weiss, Rifkind, Wharton & Garrison, Attorneys for Defendant, Cities Service Company.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

So Ordered: July 30, 1963.

Irving Ben Cooper, United States District Judge.

[fol. 90]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civ. No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO, INC., Defendants.

STIPULATION—October 14, 1963

It Is Hereby Stipulated and Agreed by and between the attorneys for plaintiff and the attorneys for the defendants indicated below that the time for each of said defendants to answer or to make any motion addressed to the amended complaint herein be and the same hereby is extended from October 15, 1963 to and including November 1, 1963. It is understood that the motions referred to in this stipulation

do not include any motions directed against plaintiff's right to file an amended complaint.

Dated: New York, N. Y., October 11, 1963.

Casey, Lane & Mittendorf, By Samuel M. Lane, Attorneys for Plaintiff.

Milton Pollack, Attorney for Defendant, British Petroleum Company, Limited.

[fol. 91] Donovan Leisure Newton & Irvine and Nixon, Mudge, Rose, Guthrie & Alexander, Mudge, Stern, Baldwin & Todd, Attorneys for Defendant, Standard Oil Company (New Jersey).

Cahill, Gordon, Reindel & Ohl, Attorneys for Defendant, Standard Oil Co. of California.

James O. Sullivan, Attorney for Defendant, Texaco, Inc.

So Ordered:

IBC, U.S.D.J.

Present: Cooper, J.

So Ordered By The Court 10-14-63.

Attest: James G. Valiche.

[fol. 92]

IN UNITED STATES DISTRICT COURT

(Letterhead of Paul, Weiss, Rifkind, Wharton & Garrison, New York, N. Y. 10022)

November 11, 1963

Honorable William B. Herlands
United States District Judge
United States Court House
Foley Square
New York, New York

Re: Waldron v. British Petroleum, et al.
Civil Action No. 110-223

Dear Judge Herlands:

In the course of the hearing held on Friday morning, November 8, 1963, your Honor mentioned that you might consider postponing consideration of the pending motion of Cities Service for summary judgment, until the eventual disposition of the motion for summary judgment which has just recently been filed by the other defendants. While your Honor's procedure in this matter is, of course, a matter of internal judicial administration, I should like to request, as earnestly as I possibly can, that our motion for summary judgment, now pending for more than three and a half years, be ruled upon independently of the new motion for summary judgment.

I have had occasion before this time to mention to your Honor that the role of a defendant in this action is a particularly expensive and burdensome one. Accordingly, when it appeared that, for reasons peculiar to plaintiff's claim against Cities Service alone, there was no genuine issue of material fact to be tried against Cities Service, we filed our motion for summary judgment in order to put an end as quickly as possible to the expenses and burdens our client would endure in this litigation.

Since April 8, 1960, when our motion was first filed, we have expended a great deal of time and energy to this end. Counsel for plaintiff have of course had to resist our motion [fol. 93] with consequent expenditure of their services, and your Honor has had to invest the time and energy of the Court in the course of the many proceedings which have followed.

Our motion is now finally ready for decision. It in no way involves any of the issues now raised by the remaining defendants. It is a motion which is peculiar to the claims alleged by Mr. Waldron against Cities Service alone. Therefore, consideration of the defendants' new motion would in no way contribute to a resolution of our motion.

Indeed, the argument of the new motion will not be held until April 6, 1964. The great length of time involved, and the many other unrelated matters which will have to be developed and considered by your Honor in the course of your consideration of the new motion, will actually serve to impede, rather than aid, your Honor's consideration of our motion. A postponement of the disposition of Cities' motion would thus serve to dissipate the energies which the Court and counsel have already devoted to our motion, and, at the same time, continue to impose burdens on our client which might otherwise be avoided.

I, therefore, respectfully submit that our motion, filed on April 8, 1960, is in every respect ripe for decision. The plaintiff has completed his examination of defendant Cities Service Co. in the two factual areas relevant to the motion, and the matter has been fully briefed and argued on a number of occasions. I feel compelled to emphasize once again that the time and energy of the Court and of counsel may be largely wasted if a ruling on our motion is postponed, pending the eventual disposition of the new motion for summary judgment. I believe most strongly that the postponement of a ruling on our motion would be an act of false economy. It would hamper, rather than aid,

the consideration of our motion; it would increase, rather than eliminate, our client's expenses and burdens in this matter; and, finally, it would deprive our client of a ruling which we have sought to procure as diligently and industriously as we possibly could, and to which we believe our client is entitled now, regardless of the possible or probable outcome of the defendants' recent motion.

Respectfully yours,

/s/ Simon H. Rifkind
Simon H. Rifkind

cc: All Counsel

[fol. 94] Proceedings

In the United States District Court

Southern District of New York

Civil Action No. 110-223

Gerald B. Waldron, individually and doing business as Consolidated Brokerage, Plaintiff,

—against—

British Petroleum Co., Ltd., Cities Service Co., Socony Mobil Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), Texaco, Inc., Defendants.

Calendar of Proceedings

This memorandum has been prepared in response to the Court's request for a chronology of proceedings in this action.

For convenient reference where appropriate, indented subparagraphs show the subsequent history of a particular calendared item.

1956

June 11 Complaint filed and summons issued.

Amended complaint filed and served July 12, 1963.

Defendants have not answered, pursuant to orders, stipulations and pending motions.

[fol. 95]

June 27 Defendants Jersey, Socony and Texaco notice examination of plaintiff to commence July 9, 1956. Socony also notices examination of Addison Brown and others.

Examination of plaintiff also subsequently noticed or stipulated by other defendants (Aug. 10, Aug. 24).

Examination of Nelson, Bentley, Zoes and Carter also subsequently noticed by Socony and Texaco (Oct. 10, Nov. 15) and subpoenas served.

June 28 Motions by defendants other than Gulf (by order to show cause signed by Judge Levet) to extend to Oct. 30, 1956 time to move, answer or otherwise plead to the complaint. Orders to show cause also extended time until 20 days after entry of an order upon determination of the motions, and stayed all further proceedings other than depositions theretofore noticed.

Hearing on July 3, 1956 before Judge Weinfeld; order extending time and determining other matters signed July 10, 1956.

June 29 Order signed by Judge Levet, on joint motion of plaintiff and Gulf, extending to September 30, 1956 Gulf's time to move, answer, plead or otherwise respond to complaint.

1956

July 3 Hearing before, and decision by, Judge Weinfeld on motions by defendants (other than Gulf) for extension of time, etc.

July 10 Order signed by Judge Weinfeld: (i) deposition of plaintiff to commence September 10, 1956;

[fol. 96]

(ii) time of defendants Cities Service, Socony, Jersey and Texaco to answer or move (other than motion as to personal jurisdiction, venue or process, which they waived) extended until 30 days after completion of deposition of plaintiff; (iii) time of defendants BP and Socal to answer or move, including any motion as to personal jurisdiction, venue or process, extended to either (a) August 25, 1956, without prejudice in the event such specified motion is denied to make a further application to extend time to move or answer, or (b) as provided in (ii) above with respect to other defendants if the specified motion is not made by August 25, 1956; (iv) plaintiff stayed from initiating discovery proceedings until five days after service of motions or answers.*

Aug. 10 Stipulation between plaintiff and Gulf, so ordered by Judge Walsh, providing that Gulf may take deposition of plaintiff commencing September 10, 1956, and extending Gulf's time to move or answer until 30 days after completion of plaintiff's deposition.

Aug. 16 Defendant Socal moves (by order to show cause signed by Judge Herlands) to set aside purported service of process on it on the grounds

* Subject to understanding of parties that plaintiff could apply for discovery in respect of any motion as to personal jurisdiction, venue or process.

1956

of lack of personal jurisdiction, improper venue, invalid service of process, etc. Order to show cause also extended time to move or answer until 20 days after service of an order determining the motion.

Plaintiff's interrogatories to Socal, dated August 31, 1956, in connection with Socal's motion to set aside service of process.

[fol. 97]

Additional summons and complaint served on Socal on September 5, 1956.
Supplemental motion by Socal to vacate service of process on September 20, 1956.
Defendant Socal noticed objections to plaintiff's interrogatories on September 28, 1956.
Stipulation of December 4, 1956 between plaintiff and Socal, so ordered by Judge Bicks on December 11, 1956, modifying certain of plaintiff's interrogatories and extending Socal's time to answer interrogatories.
Defendant Socal's answers to interrogatories verified January 8, 1957.
Defendant Socal's motion to set aside service of process argued before Judge Dawson on February 14, 1957.
Motion denied March 18, 1957.

Sept. 10 Deposition of plaintiff commenced.

Examination conducted on Sept. 10-14, 24-28, Oct. 30-31, Nov. 1-2, 5, 7-9, 13-15, 1956; Jan. 7-10, 17-18, 21-25, March 18, 20-22, 25-29, April 2-5, 8-9, June 13-14, 17-21, 24-28, July 1-3, 1957; Sept. 16-19, 22-23, 29-30, Oct. 1-3, 9-10, 14, 20-24, 27-31, Nov. 12-13, 1958; Feb. 24, Oct. 26-29, 1959; May 31, 1962.

1956

Sept. 26 Deposition of Bentley formally commenced and adjourned *sine die*.

Resumed June 19, 1961.

[fol. 98]

1957

Mar. 18 Decision of Judge Dawson denying Socal's motion to set aside service of process.

Apr. 12 Stipulation between plaintiff and Socal, so ordered by Judge Murphy, extending Socal's time to answer or move (other than motion as to personal jurisdiction, venue or process) until 30 days after completion of plaintiff's deposition and staying plaintiff from initiating discovery until five days after answer or motions.

Dec. 30 Plaintiff moves to terminate his deposition by Jersey and to vacate all notices by other defendants to take depositions of plaintiff and others, and also requests that defendants be compelled to move or answer and that his discovery commence.

Motion argued before Judge Herlands on January 30, 1958 and denied in all respects.

Defendants' proposed order served February 6, 1958, with notice of settlement on February 11, 1958.

Plaintiff's proposed counter-order served February 10, 1958.

Order signed by Judge Herlands on February 11, 1958.

1958

Feb. 11 Order on plaintiff's motion by Judge Herlands (with memorandum of February 13, 1958 listing the papers considered in connection with settlement of the order) provides: (i) plaintiff's mo-

1958
[fol. 99]

tion denied in all respects; (ii) plaintiff's deposition by Jersey to resume March 10, 1958 unless another date agreed by parties; (iii) schedule of number of days of examination of plaintiff by each defendant; (iv) order of examination of Nelson, Bentley, Boes, Carter and Brown, as theretofore noticed; (v) schedule of number of days of examination of said persons by each defendant; (vi) hours of daily examinations; (vii) completion of scheduled deposition program to have priority over the initiation of any discovery by plaintiff; (viii) time of defendants to answer or move extended to 30 days after completion of scheduled deposition program; (ix) retention of jurisdiction to modify schedules upon application.

Aug. 28 Plaintiff moves to be relieved of his stipulation re place of deposition.

September 5, 1958 stipulation of parties setting place of deposition and providing for withdrawal of plaintiff's motion, so ordered by Judge Edelstein September 8, 1958.

Sept. 23 Application by defendant Jersey to Judge Sugarman to compel plaintiff to answer certain questions on deposition which he was directed by his counsel not to answer. Briefs scheduled for Sept. 27, 1958.

Plaintiff withdrew objections to questions on Sept. 25, 1958 and application thereupon withdrawn.

Nov. 5 Plaintiff moves (by order to show cause signed by Judge Kaufman) to extend time to appear for deposition by Texaco until Jan. 5, 1959.

1958

[fol. 100]

Order by Judge Kaufman on Nov. 6, 1958 directing plaintiff to appear for examination on or before Nov. 12, 1958.

1959

May 1 Order by Judge Ryan referring the action to Judge Herlands for all purposes.

May 6 Plaintiff and defendant Gulf move jointly to dismiss claim against Gulf and to strike the name of Gulf as a defendant from the complaint.

Order by Judge Herlands on May 12, 1958 granting motion without opposition after hearing.

1960

Jan. 18 Deposition of Nelson commenced.

Examination conducted on Jan. 18-22, 25-29, Feb. 10, 16, 18, 23, 25, Mar. 1, 8, 10, 22, 24, 29, 31, Apr. 5, 12, 14, 26, 28, May 10, 12, June 2, 7, 16, Oct. 11-12, 1960.

Apr. 8 Defendant Cities Service moves for summary judgment dismissing the complaint as to it.

At a conference before Judge Herlands on Apr. 20, 1960, argument set for May 9, 1960. Argument of Cities Service motion on May 9, 1960, at which schedule set for supplemental affidavits and memoranda.

Memorandum opinion by Judge Herlands on March 30, 1961 postponing a decision of the

[fol. 101]

summary judgment motion pending appropriately supervised discovery and related pretrial proceedings.

Proposed orders submitted by plaintiff and defendant Cities Service with notice of settlement on May 3, 1961.

1960

Hearing on order before Judge Herlands on May 3, 1961 and order signed adjourning summary judgment motion pending completion of specified examination of Cities Service by plaintiff pursuant to Rule 56(f).

Letter request on May 13, 1963 by Cities Service for final determination of motion for summary judgment. Cities Service motion for summary judgment pending.

1961

May 3 Order by Judge Herlands on Cities Service motion for summary judgment: (i) motion adjourned pending completion of examination of Cities Service by plaintiff pursuant to Rule 56(f); (ii) examination to commence 31 days after conclusion of deposition program set forth in order of Feb. 11, 1958; (iii) examination limited to two specified subjects, to be by Hill, and maximum of 10 days; (iv) within 20 days after examination, plaintiff and Cities Service may submit any portion of deposition for final consideration of pending motion.

June 19 Deposition of Bentley resumed from Sept. 26, 1956.

Examination conducted on June 19-20, 26-27, 30, Nov. 9-10, 14, 27-28, Dec. 18, 1961; Jan. 9, 1962.

[fol. 102]

1962

March 6 Deposition of Zoes commenced.

Examination conducted on Mar. 6-7, 13-15, 21, 27-28, Apr. 4, 1962.

1962

April 6 Stipulation by parties, so ordered by Judge Herlands on April 9, 1962, on remaining schedule of deposition program set forth in Order of Feb. 11, 1958, providing that program shall be concluded by May 31, 1962 and that defendants' time to move or answer extended to June 30, 1962 unless otherwise agreed.

April 19 Plaintiff moves for discovery of Carter documents in advance of any examination of Carter.

Motion withdrawn April 30, 1962.

April 25 Deposition of Brown commenced pursuant to additional notice by Socony dated April 18, 1962.

Examination conducted on April 25-27, 1962.

May 31 Stipulation by parties, so ordered by Judge Herlands, on procedures and schedule to be followed on proposed Amended Complaint, and setting time to answer or move: (i) as to defendants other than Cities Service, 30 days after entry of an order by the Court on plaintiff's motion to amend, and (ii) as to Cities Service, 30 days after determination of its motion for summary judgment, or date in (i), whichever is later.

[fol. 103]

July 2 Stipulation by parties, so ordered by Judge Palmieri on July 5, 1962, that the program for amending the complaint set forth in the May 31, 1962 stipulation be stayed pending completion of plaintiff's examination of Cities Service (commencement of which was adjourned to Sept. 10, 1962).

Amended complaint filed and served July 12, 1963.

1962

Oct. 10 Deposition of Hill of Cities Service by plaintiff commenced.

Examination conducted on Oct. 10-11 (adjourned on Oct. 11, 1962 by stipulation, to be resumed on Nov. 8, 1962 pending motion by plaintiff for additional Cities Service documents or motion for protection order), Dec. 17, 27, 1962; Jan. 10, Feb. 27, 1963.

Oct. 16 Stipulation by parties, so ordered by Judge Herlands, on non-disclosure of specified document produced by Cities Service to plaintiff.

Nov. 7 Hearing before Judge Herlands on application of defendant Socal of Nov. 5, 1962 to adjourn deposition of Hill to Dec. 10, 1962 under specified conditions, and on oral cross-motion of defendant Cities Service that the deposition of Hill go forward under seal pending further order of the Court. Deposition adjourned pending hearing and determination of the application on Nov. 13, 1962.

Proposed order of Cities Service served Nov. 8, 1962, with notice of settlement on Nov. 13, 1962. Proposed counter-order of plaintiff served Nov. 12, 1962.

[fol. 104]

Nov. 13 Further hearing before Judge Herlands. Leave granted to submit additional papers by Nov. 19, 1962.

Revised proposed counter-order submitted by plaintiff Nov. 19, 1962.

Plaintiff moves on Nov. 20, 1962 for additional discovery of Cities Service documents.

1962

Dec. 5 Hearing before Judge Herlands on (i) settlement of order and (ii) plaintiff's motion for discovery of Cities Service documents. Plaintiff's motion for discovery denied in all respects. Parties directed to prepare new form of order for settlement to take account of subsequent developments, including letter of November 26, 1962 from the United States Attorney.

Proposed order of defendants served Dec. 7, 1962 with notice of settlement on Dec. 11, 1962. Proposed counter-order of plaintiff served Dec. 11, 1962 with notice of settlement on Dec. 13, 1962.

Dec. 13 Order signed by Judge Herlands: (i) establishes procedures relating to the non-disclosure of certain information produced or given by Cities Service; (ii) defines scope of examination of Hill, to be resumed on Dec. 17, 1962.

1963

Feb. 8 Hearing before Judge Herlands on plaintiff's application to obtain rulings on questions and objections at deposition of Hill. Rulings in accordance with transcript.

[fol. 105]

Mar. 25 Letter application by plaintiff to obtain rulings on questions and objections at Feb. 27, 1963 deposition of Hill.

Memorandum decision by Judge Herlands on April 22, 1963 sustaining objections interposed by Cities Service.

May 8 Plaintiff moves under Rule 56(f) for further documentary discovery and further examination by oral deposition of Cities Service.

1963

May 13 Defendant Cities Service requests by letter a final determination of motion of summary judgment.

May 27 Hearing before Judge Herlands on plaintiff's motion for further discovery against Cities Service and on Cities Service motion for summary judgment. Court establishes procedure for further development of points (Tr. pp. 58-60).

Decision on motions pending.

July 12 Amended complaint filed and served.

Not answered by defendants pursuant to stipulation and pending motions.

July 17 Stipulation extending to Oct. 15, 1963 time of defendants other than Cities Service to answer or move; so ordered on July 19, 1963 by Judge MacMahon.

[fol. 106]

July 29 Stipulation between plaintiff and Cities Service providing that if its summary judgment motion is denied Cities Service shall have 30 days after said determination to file its answer; so ordered by Judge Cooper July 30, 1963.

Oct. 11 Stipulation extending to Nov. 1, 1963 time of defendants other than Cities Service to answer or move; so ordered on Oct. 14, 1963 by Judge Cooper.

Nov. 1 Defendants other than Cities Service move: (i) to dismiss the action and for summary judgment; (ii) for a pre-trial order and to strike.

1963

Motions pending. Schedule for service and filing of papers and oral argument established at hearing on Nov. 8, 1963.

Nov. 7 Defendants move to compel Bentley to sign his deposition forthwith.

At hearing on Nov. 8, 1963, argument of the motion scheduled for Nov. 21, 1963.

Bentley deposition, signed and sworn to by him, delivered to defendants Nov. 19, 1963 and motion accordingly withdrawn as moot.

Nov. 8 Hearing before Judge Herlands at which schedule established on defendants' motion to dismiss and for summary judgment: (i) plaintiff's answering memorandum by Feb. 17, 1964; (ii) defendants' reply memorandum by March 16, [fol. 107] 1964; (iii) oral argument on April 6, 1964. Timetable for service and filing of papers and argument on motion for a pre-trial order and to strike kept open and no dates fixed in connection therewith.

Respectfully submitted,

ATTORNEYS FOR ALL DEFENDANTS

January 10, 1964

[fol. 108]

IN UNITED STATES DISTRICT COURT

(Letterhead of Casey, Lane & Mittendorf,
New York 4, N. Y.)

February 3, 1964

Hon. William B. Herlands
U.S. District Court
U.S. District Court House
Foley Square
New York, N.Y. 10007

RE: *Waldron* v. *British Petroleum*

Dear Judge Herlands:

I write in support of an application which I have asked my associate Robert P. Beshar to make to Your Honor for an extension of time to file papers in opposition to defendants' motion for summary judgment.

Not only is it going to be impossible for us to do justice to our side of the case in the time provided, but I will be out of the City until February 16 on the first vacation that I have had for several years. Our papers are due to be served and filed on February 17. When the schedule was agreed upon I was engaged in a trial in White Plains so that I was unable to be present. Since then I have been at my desk every day (Saturday and Sunday included) and many nights, except for Christmas and except for four or five days when I was away on business. Your Honor, I know, appreciates the strain of such a pace and knows that I would not ask for a break unless I needed it badly. This, in fact, is the first time that I have ever requested such a courtesy.

Although my confidence in Mr. Beshar is unbounded the responsibility for opposing the pending motion is mine, not his, and I must attend to it personally.

Accordingly, I respectfully ask that the time for the submission of plaintiff's papers be *extended to March 17* if that is agreeable to all counsel.

Respectfully yours,

/s/ SAMUEL M. LANE

AS

SML:AS

[fol. 109]

IN UNITED STATES DISTRICT COURT

(Letterhead of Paul, Weiss, Rifkind, Wharton & Garrison, New York, N. Y. 10022)

February 14, 1964

Hon. William B. Herlands
U.S. District Court
U.S. District Court House
Foley Square
New York, N.Y. 10007

Re: *Waldron* v. *British Petroleum* Civ. No. 110-223

Dear Judge Herlands:

We received a copy of Mr. Lane's letter of February 3 requesting an adjournment of one month for the filing of certain papers on the motion for summary judgment made by the other defendants, to which Cities Service is not a party. We have no objection to—indeed we have no interest in—the proposed adjournment since as we wrote Your Honor on November 11, 1963, in our view the motion made by the other defendants has nothing to do with the motion for summary judgment made by defendant Cities Service on April 8, 1960.

As we pointed out to Your Honor on November 11, 1963, in our view Cities Service's motion is in every respect ripe

for decision. The postponement of a determination of Cities Service's motion until the other motion is considered would, in our view, be an act of false judicial economy.

We again most respectfully urge that the Court proceed to dispose of Cities Service's motion for summary judgment.

Respectfully yours,

/s/ Edward N. Costikyan
Edward N. Costikyan

Copies to all counsel

[fol. 110]

In United States District Court

(Letterhead of Paul, Weiss, Rifkind, Wharton & Garrison, New York, N. Y. 10022)

March 19, 1964

Hon. William B. Herlands
United States District Court
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: Waldron v. British Petroleum, *et al.*;
Civil Action No. 110-223

Dear Judge Herlands:

We recently received a copy of plaintiff's memorandum in opposition to the motion for summary judgment made by all defendants other than Cities Service. This motion has nothing to do with Cities Service's motion for summary judgment, which was finally submitted to the Court for decision on September 18, 1963. We, therefore, will not respond to plaintiff's memorandum, except to protest against plaintiff's grossly unfair statements regarding Cities Service.

Plaintiff, in a completely irrelevant *ad hominem* argument, has claimed that Cities Service has "successfully taken up three years of the Court's and the litigants' time . . . [with] . . . the purpose and the result" of delaying plaintiff's discovery (Plaintiff's Memo, page 5).

On May 3, 1961, almost three years ago, plaintiff was given the right to examine Cities Service Co. for ten days. It was not until almost two years later, February 8, 1963. that plaintiff completed the examination of Cities Service. [fol. 111] Because of further motions by plaintiff, it was not until September 18, 1963 that our motion for summary judgment was finally submitted to your Honor for determination. For plaintiff to charge Cities Service with delay over the last three years is to add an unfair insult to an unfair injury.

We respectfully urge once again that Cities Service's motion for summary judgment is ready for final determination and that our client is now entitled to the opportunity to be relieved of further expense and harassment in this matter.

Respectfully yours,

/s/ Simon H. Rifkind
Simon H. Rifkind

Copies to all counsel.

[fol. 112]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO, INC., Defendants.

STIPULATION—Filed August 7, 1964

It Is Hereby Stipulated by and between the attorneys for plaintiff and the attorneys for the defendants indicated below, subject to the approval of the Court, that the following shall be the dates for the service of plaintiff's opposition and the moving defendants' replies, and for oral argument, on the motion of said defendants to strike and for a pre-trial order dated November 1, 1963 and heretofore served on plaintiff:

1. Plaintiff shall serve his opposition papers to said motion by October 9, 1964.

2. The moving defendants shall serve their replies by November 2, 1964.

3. Oral argument shall be held before Judge Herlands at 10:00 A.M. on Monday, November 9, 1964.

Dated: New York, N. Y., August 6, 1964.

Casey, Lane & Mittendorf, Attorneys for Plaintiff,
By Samuel M. Lane.

[File endorsement omitted]

[fol. 113] Milton Pollack, Attorney for Defendant British Petroleum Company, Limited.

Donovan Leisure Newton & Irvine and Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Defendant Socony Mobil Oil Co., Inc.

Sullivan & Cromwell, Attorneys for Defendant Standard Oil Company (New Jersey).

Cahill, Gordon, Reindel & Ohl, Attorneys for Defendant Standard Oil Co. of California.

James O. Sullivan, Attorney for Defendant Texaco, Inc.

So Ordered:

William B. Herlands, U.S.D.J.

[fol. 114]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO INC., Defendants.

STIPULATION—Filed November 5, 1964

Defendants British Petroleum Company Limited, Socony Mobil Oil Company, Inc., Standard Oil Company of Cali-

[File endorsement omitted]

fornia, Standard Oil Company (New Jersey) and Texaco Inc. having moved, pursuant to Rules 12(f) and 16 of the Federal Rules of Civil Procedure, for an order

(a) Striking, from Par. 8 of the Amended Complaint in this action, the allegation

> "As set forth in great detail in *United States* v. *Standard Oil Company (New Jersey), et al.*, Civil Action No. 86-27, the so-called 'Oil Cartel Case' now pending in this Court,"

(b) Directing that Civil Action No. 86-27 be excluded from the scope of discovery and other pre-trial procedures in this case;

It Is Hereby Stipulated by the undersigned that said motion be disposed of, subject to the approval of Honorable William B. Herlands, in the following manner:

[fol. 115] 1. In the event of a trial by jury in this action, the allegation quoted above from Par. 8 of the Amended Complaint herein shall not be brought to the attention of the jury in this action. Upon application by any party, the Court will determine by pre-trial order or otherwise whether any other reference to Civil Action No. 86-27 may be made in the presence of the jury in this action. Provided, however, that with respect to any of the substantive matters which are referred to in Civil Action No. 86-27 nothing herein shall prejudice (a) any rights that plaintiff may have to refer to such matters in this action, or (b) any rights that any of the undersigned defendants may have to object to such reference on the grounds of relevancy or otherwise.

2. The fact that any matter has been the subject of discovery in Civil Action No. 86-27 shall not of itself, except as the Court may otherwise rule upon application by any party, provide the basis or be a ground for justifying or opposing discovery of such matter in this action, provided, however, that nothing herein shall prejudice (a)

any rights that plaintiff may have to refer to or rely upon the fact of such discovery in Civil Action No. 86-27, or (b) any rights that any of the undersigned defendants may have to object to such discovery in this action on the grounds of relevancy or otherwise.

3. If at any time in the course of further proceedings in this action, any undersigned defendant is required to make any disclosure which, in the opinion of said defendant, has been prohibited by any governmental authority, said defendant shall promptly give notice thereof to this Court and to counsel for the other parties, whereupon this [fol. 116] Court will conduct such further proceedings as to this Court may seem appropriate, and in such further proceedings said defendant shall assume the burden of establishing that it is entitled to be relieved from such requirement.

4. Nothing in this order shall be construed to prejudice, or as a waiver of, any right not specifically mentioned herein.

Dated: New York, N. Y., November 4, 1964.

Casey Lane & Mittendorf, Attorneys for Plaintiff.

Milton Pollack, Attorney for Defendant British Petroleum Company Limited.

Donovan Leisure Newton & Irvine; Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Defendant Socony Mobil Oil Company, Inc.

Cahill, Gordon, Reindel & Ohl, Attorneys for Defendant Standard Oil Company of California.

Sullivan & Cromwell, Attorneys for Defendant Standard Oil Company (New Jersey).

R. B. Wills, Attorney for Defendant Texaco Inc.

Approved and So Ordered. November 4, 1964.

William B. Herlands, U.S.D.J.

[fol. 117]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

vs.

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO INC., Defendants.

STIPULATION—Filed November 6, 1964

It Is Hereby Stipulated and Agreed by and between the attorneys for plaintiff and the attorneys for the defendants indicated below that the time for each of said defendants to answer the amended complaint herein be and the same hereby is extended from ten days after the entry of the Court's order on said defendants' motion to strike and for a pre-trial order to and including thirty days after said entry, unless otherwise ordered.

Dated: New York, New York, November 4, 1964.

Casey, Lane & Mittendorf, Attorneys for Plaintiff.

Milton Pollack, Attorney for Defendant British Petroleum Company, Limited.

[fol. 118] Donovan, Leisure, Newton & Irvine and Nixon, Mudge, Rose, Guthrie & Alexander, Attorneys for Defendant Socony Mobil Oil Co., Inc.

[File endorsement omitted]

Sullivan & Cromwell, Attorneys for Defendant Standard Oil Company (New Jersey).

Cahill, Gordon, Reindel & Ohl, Attorneys for Defendant Standard Oil Co. of California.

James O. Sullivan, Attorney for Defendant, Texaco, Inc.

So Ordered: November 5, 1964.

William B. Herlands, U.S.D.J.

[fol. 119]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO INC., Defendants.

ORDER—November 10, 1964

Messrs. Casey, Lane & Mittendorf having suggested upon the record on November 9, 1964, pursuant to Rule 25(a) F.R.Civ.P., that the plaintiff herein has died, it is hereby

Ordered that all further proceedings in this action be and the same hereby are stayed, and all times heretofore set for hearings and pleadings be and the same hereby are

[File endorsement omitted]

deferred, until further order of the Court, except a motion in accordance with Rule 25(a) F.R.Civ.P.

Dated: New York, New York, November 10, 1964.

William B. Herlands, U.S.D.J.

[fol. 120]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

GERALD B. WALDRON, individually and doing business as CONSOLIDATED BROKERAGE, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO INC., Defendants.

MEMORANDUM-DECISION—February 9, 1965

HERLANDS, District Judge:

The Court hereby grants the motion of Patricia Waldron for an order pursuant to Rule 25(a) F.R.C.P. substituting her, in her capacity as executrix of the last will and testament of the deceased plaintiff, Gerald B. Waldron, as plaintiff in this action.

The defendants have not opposed the granting of this motion.

Agreeing with the position urged by the defendants, the Court will defer—pending the adjudication of liability [fol. 121] by trial or otherwise—a determination of the issue relating to the survivability of the claim for the trebling of the alleged actual damages, and of the claim for

attorneys' fees, in the event it should become necessary to consider that issue in this action.

So ordered.

William B. Herlands, U. S. D. J.

Dated: New York, N. Y., February 9, 1965.

[fol. 122]

IN UNITED STATES DISTRICT COURT

CABLE ADDRESS: "LADYCOURT," NEW YORK

SULLIVAN & CROMWELL

48 Wall Street, New York 5

Honorable William B. Herlands
United States District Judge,
United States Court House,
Foley Square,
New York, N. Y. 10007

Re: Patricia Waldron, as executrix, etc.
v. British Petroleum Co. Ltd., et al.—
Civ. Action No. 110/223

Dear Judge Herlands:

At the February 9, 1965 hearing, in response to my inquiry about fixing a time for answer depending upon the outcome of Cities Service's renewed motion for summary judgment and plaintiff's cross-motion, your Honor said that a spokesman for the defense should activate the Court and other counsel with respect to any matters still pending when those motions had been disposed of (Transcript of February 9, 1965 hearing, page 47). The purpose of this letter is to report on the steps that have been taken in this regard.

After reviewing your Honor's opinion of September 8, 1965 and the judgment of September 14, 1965 granting Cities Service's motion and denying plaintiff's cross-motion, counsel for the defendants other than Cities Service ("defense counsel") conferred as to their effect on further procedures in the case, particularly if plaintiff appealed. Thereafter, on September 24, 1965, defense counsel wrote to plaintiff's counsel (copy enclosed) asking about plans for appeal in order to attempt to work out further procedures. In a telephone conversation on September 27, 1965, plaintiff's counsel agreed with defense counsel that, pending final word on the filing of an appeal, any matters with respect to the remaining defendants should remain in abeyance. Defense counsel's letter of September 28, 1965 confirming this conversation is enclosed.

On September 30, 1965, plaintiff's counsel wrote that his client had authorized him to appeal and the appeal was thereafter taken. Defense counsel then gave extensive attention to the question of whether the filing of the notice [fol. 123] of appeal automatically transfrred jurisdiction of the entire case to the Court of Appeals, so that the case could not go forward with respect to the remaining defendants. We also further studied the practical impact of the Cities Service decision on the remainder of the case. We determined that, regardless of the jurisdictional question, the outcome of plaintiff's appeal would have far-reaching consequences on the nature of plaintiff's claim and on further procedures in the trial court, and that there might be substantial timing problems in plaintiff's prosecuting the appeal and simultaneously proceeding in the trial court against the other defendants. Defense counsel therefore telephoned plaintiff's counsel on October 18, 1965 and proposed that the parties stipulate that the proceedings in the District Court be held in abeyance pending final determination of the appeal. Mr. Lane at first expressed some reluctance at this approach but then said that he was heavily engaged at the moment and would like to consider the mat-

ter and talk further with defense counsel about how to proceed.

Since that time we have communicated with plaintiff's counsel and the discussions are still open. We nonetheless felt, in view of your statement at the February 9th hearing, that we should advise your Honor of our evaluation of the problems in our present situation, and of our efforts to meet them.

Respectfully,

/s/ Arthur H. Dean
Arthur H. Dean

Copies to: Samuel M. Lane, Esq.
Defense Counsel

[fol. 123a]

United States District Court

Southern District of New York

Case No. Civil. 110-223

Patricia Waldron, as executrix of the last will and tesament of Gerald B. Waldron, deceased, Plaintiff,

—against—

British Petroleum Co., Ltd., Cities Service Co., Socony Mobil Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), Texaco, Inc., Defendants.

Clerk's Certificate

I, John J. Olear, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that we are transmitting herewith the annexed papers and documents pursuant to the order of the Hon. Harold R. Tyler, Jr., dated June 1, 1967.

In Testimony Whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 6th day of June, in the year of our Lord, one thousand nine hundred and sixty-seven and of the Independence of the United States the one hundred and ninety-first.

John J. Olear, Jr., Clerk of the Court.

[fol. 124]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO, INC., Defendants.

Civil Action No. 110-223

ORDER—June 1, 1967.

Upon the annexed affidavit of Edward N. Costikyan, sworn to June 1, 1967, together with the exhibits thereto, and upon the Order of the Supreme Court of the United States entered on April 24, 1967 in *Waldron* v. *Cities Service Co.*, (October 1966 Term, No. 744), it is

Ordered that the original papers in the above-entitled action specified in Exhibit A to said affidavit, or duplicate copies thereof if the originals cannot be found, be trans-

[File endorsement omitted]

mitted to the Clerk of the Supreme Court of the United States pursuant to Rule 12 of the Rules of said Court.

Dated: New York, N. Y., June 1st, 1967.

H. R. Tyler, Jr., U.S.D.J.

[fol. 125]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased, Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO, INC., Defendants.

AFFIDAVIT

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

EDWARD N. COSTIKYAN, being duly sworn, deposes and says:

1. I am a member of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant Cities Service Co. ("Cities Service") herein. I submit this affidavit in support of Cities Service's application for an order directing the Clerk of this Court to transmit additional papers to the Supreme Court of the United States.

2. On February 16, 1966, the Supreme Court granted a writ of certiori in the above entitled-action (*sub nom. Waldron* v. *Cities Service Co.*, October 1966 Term, No.

744). In proceedings to designate the record upon which this case would be considered, Cities Service moved in the Supreme Court on February 11, 1967 for an order requir-
[fol. 126] ing certification of additional parts of the record. (A copy of this motion is attached hereto as Exhibit A.)

3. On April 24, 1967, the Supreme Court granted this motion and ordered that the additional papers described in Exhibit A—all of which are in the possession of the Clerk of this District Court—be certified and transmitted to the Clerk of the Supreme Court. (See Exhibit B annexed hereto.)

4. I have been informed that the Clerk of the Supreme Court is currently in the process of assembling the record in this case for printing. Therefore, in order to save both time and expenses, I respectfully request that this Court direct that the original additional papers specified by the Supreme Court, and identified in Exhibit A hereto, or duplicate copies thereof if the originals cannot be found, be certified and forwarded to the Clerk of the Supreme Court.

Edward N. Costikyan

Subscribed and sworn to before me this 1st day of June, 1967.

Melvin Goldstein
Notary Public, State of New York
No. 31-1494602
Qualified in New York County
Commission Expires March 30, 1969

[fol. 127]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 744

PATRICIA WALDRON, as Executrix of the Last Will and Testament of GERALD B. WALDRON, Deceased, Petitioner,

—against—

CITIES SERVICE Co., Respondent.

RESPONDENT'S MOTION TO REQUIRE CERTIFICATION OF ADDITIONAL PARTS OF THE RECORD

Respondent moves, pursuant to Rule 26, paragraph 5, of the Revised Rules of the Supreme Court of the United States, for an order requiring certification of the documents described in Schedule A hereto, each of which is part of the record in this action on file with the United States District Court for the Southern District of New York. The grounds of the motion are as follows:

1. This is an appeal from an order of the United States District Court for the Southern District of New York (Herlands, J.), unanimously affirmed by the Second Circuit, granting summary judgment in favor of respondent (one of six defendants below) and denying petitioner (plaintiff below) further discovery with respect to the conclusory allegations in the amended complaint concerning respondent. At the time summary judgment was granted, respondent's officers had been examined on 15 separate days and an extensive production of documents had been made by respondent with respect to all claims asserted against it.

[fol. 128] 2. Respondent has not previously certified the documents described in Schedule A because when the record was certified to the Second Circuit, respondent had no reason to foresee that these documents would relate to any question presented by the appeal. However, issues raised by petitioner, after the certification of the record, make it essential that these documents now be made part of the record to this Court.

3. In her argument before the Second Circuit (which, of course, followed the certification of the record to that Court) and in her petition for certiorari, petitioner made much of the facts: that this action was commenced in 1956; that there had been substantial discovery by defendants other than respondent; that, except for discovery against respondent, petitioner had had no discovery of any other defendant; and that no answers had been served. These contentions are irrelevant to the issues raised by respondent's motion for summary judgment and were not pressed by petitioner before the District Court.

4. Because of the irrelevancy of these contentions and petitioner's failure to press them in the District Court, respondent saw no need to certify to the Second Circuit documents which relate to the reasons for the lawsuit's age, the history of discovery, or the history of pleadings. However, since petitioner's arguments in the Second Circuit and her petition for certiorari stress these matters, there is now every reason to believe that petitioner's brief to this Court will do the same.

5. While we believe that these matters are wholly irrelevant, we fear that respondent might be prejudiced [fol. 129] if it were denied the opportunity to rebut petitioner's contentions by demonstrating to this Court the facts: (a) that petitioner is responsible for the age of the case and for the very history complained of; and (b) that respondent bears no responsibility for any of this.

6. The documents described in Schedule A will serve to establish these facts. As the need for certification of

these documents could not have been anticipated prior to the service of petitioner's brief to the Second Circuit, we respectfully submit that they should be certified now so that the record will be complete on all matters which might be raised on the appeal to this Court.

7. Finally, we note that the parties to this appeal have agreed in the stipulation forming the record on appeal to the Second Circuit, dated November 18, 1965, "that either party may designate any additional original file papers as comprising the record on appeal and said additional papers shall be deemed to have been included in the stipulation" forming the record (Verified Record on Appeal, pp. 12131-12135). Accordingly, we further respectfully submit that the present motion should be granted not only for the reasons stated above, but also because of this stipulation under which either party could add original file papers to the record on appeal by mere designation of such papers.

Respectfully submitted,

Simon M. Rifkind, Edward N. Costikyan, Jay Greenfield, Counsel for Respondent, 575 Madison Avenue, New York, N.Y. 10022, By Jay Greenfield.

Of Counsel:

Paul, Weiss, Rifkind, Wharton & Garrison

Dated: February 11, 1957.

[fol. 130] SCHEDULE A

(All documents have been filed with the United States District Court for the Southern District of New York; Civil Action No. 110-223)

Stipulation between plaintiff and defendant Gulf Oil Corporation, so ordered on August 10, 1956.

Stipulation dated November 30, 1956, between plaintiff and defendant Socony Mobil Oil Co., Inc.

Stipulation dated January 9, 1957, between James W. Zoes, plaintiff, and defendant The Texas Company.

Stipulation dated January 9, 1957, between Ray Carter, plaintiff, and defendant The Texas Company.

Stipulation dated January 22, 1957, between Richard S. Nelson, plaintiff, and defendants Socony Mobil Oil Co., Inc. and The Texas Company.

Stipulation dated March 20, 1957, between Richard S. Nelson, plaintiff, and defendants Socony Mobil Oil Co., Inc. and The Texas Company.

Stipulation dated March 20, 1957, between Ray Carter, plaintiff, and defendant The Texas Company.

Stipulation dated March 29, 1957, between James E. Zoes, plaintiff, and defendant The Texas Company.

Stipulation dated March 29, 1957, between James A. Bentley, plaintiff, and defendant The Texas Company.

Stipulation dated May 14, 1957, between Richard S. Nelson, plaintiff, and defendants Socony Mobil Oil Co., Inc. and The Texas Company.

Stipulation dated May 16, 1957, between James A. Bentley, plaintiff, and defendant The Texas Company.

Stipulation dated May 16, 1957, between James E. Zoes, plaintiff, and defendant The Texas Company.

Stipulation dated May 16, 1957, between Ray Carter, plaintiff, and defendant The Texas Company.

Stipulation dated September 25, 1957, between James E. Zoes, plaintiff, and defendant The Texas Company.

Stipulation dated September 25, 1957, between Ray Carter, plaintiff, and defendant The Texas Company.

Stipulation dated September 25, 1957, between James A. Bentley, plaintiff, and defendant The Texas Company.

Stipulation dated September 25, 1957, between Richard S. Nelson, plaintiff, and defendants Socony Mobil Oil Co., Inc. and The Texas Company.

Stipulation dated November 12, 1957, between James A. Bentley, plaintiff, and defendant The Texas Company.

[fol. 131] Stipulation dated November 12, 1957, between Richard S. Nelson, plaintiff, and defendants Socony Mobil Oil Co., Inc. and The Texas Company.

Stipulation dated November 12, 1957, between James E. Zoes, plaintiff, and defendant The Texas Company.

Stipulation dated November 12, 1957, between Ray Carter, plaintiff, and defendant The Texas Company.

Stipulation dated January 14, 1958, between James A. Bentley, plaintiff, and defendant The Texas Company.

Stipulation dated January 14, 1958, between Richard S. Nelson, plaintiff, and defendants Socony Mobil Oil Co., Inc. and The Texas Company.

Stipulation dated January 14, 1958, between James E. Zoes, plaintiff, and defendant The Texas Company.

Stipulation dated January 14, 1958, between Ray Carter, plaintiff, and defendant The Texas Company.

Stipulation dated March 7, 1958, between all parties.

Stipulation dated March 7, 1958, between Ray Carter, plaintiff, and defendant The Texas Company.

Stipulation dated March 7, 1958, between James E. Zoes, plaintiff, and defendant The Texas Company.

Stipulation dated March 7, 1958, between James A. Bentley, plaintiff, and defendant The Texas Company.

Stipulation dated March 7, 1958, between Richard S. Nelson, plaintiff, and defendant The Texas Company.

Stipulation dated March 26, 1958, between Richard S. Nelson, plaintiff, and defendant Socony Mobil Oil Co., Inc.

Stipulation dated April 3, 1958, between all parties.

Stipulation dated January 9, 1959, between all parties other than defendant Gulf Oil Corp.

Stipulation dated March 2, 1959, between all parties.

Stipulation dated April 2, 1959, between all parties.

Stipulation dated May 4, 1959, between all parties.

Stipulation dated May 20, 1959, between all parties.

Stipulation dated July 10, 1959, between all parties.

Stipulation dated September 16, 1959, between all parties.

Stipulation dated November 3, 1959, between Richard S. Nelson, plaintiff, and defendant Socony Mobil Oil Co., Inc.

Stipulation dated November 11, 1959, between Richard S. Nelson, plaintiff, and defendant Socony Mobil Oil Co., Inc.

[fol. 132] Stipulation dated November 25, 1959, between all parties.

Stipulation dated September 8, 1960, between all parties.

Stipulation dated December 8, 1960, between all parties.

Stipulation dated January 17, 1961, between all parties.

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Stipulation dated October 30, 1961, between all parties.

Stipulation dated April 6, 1962, between all parties.

Stipulation dated May 31, 1962, between all parties.

Stipulation dated July 2, 1962, between all parties.

Stipulation dated September 10, 1962, between all parties.

Stipulation dated September 4, 1962, between plaintiff and defendant Cities Service Company.

Stipulation between all parties, other than defendant Cities Service Company, so ordered July 19, 1963.

Stipulation dated July 29, 1963, between defendant Cities Service Company and plaintiff.

Stipulation dated October 11, 1963, between all parties other than defendant Cities Service Company.

Letter from Simon H. Rifkind to the Hon. William B. Herlands, dated November 11, 1963.

Calendar proceedings, dated January 10, 1964.

Letter from Samuel M. Lane to the Hon. William B. Herlands, dated February 3, 1964.

Letter from Edward N. Costikyan to the Hon. William B. Herlands, dated February 14, 1964.

Letter from Simon H. Rifkind to the Hon. William B. Herlands, dated March 19, 1964.

Stipulation dated August 6, 1964, between all parties other than defendant Cities Service Company.

Stipulation dated November 4, 1964, between all parties other than defendant Cities Service Company, so ordered on November 4, 1964.

Stipulation dated November 4, 1964, between all parties other than defendant Cities Service Company, so ordered on November 5, 1964.

Order dated November 10, 1964.

Memorandum decision dated February 9, 1965.

Letter from Arthur H. Dean to the Hon. William B. Herlands, dated November 24, 1965.

[fol. 133] OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C., 20543

April 24, 1967

RE: WALDRON, ETC. v. CITIES SERVICE CO.,

No. 744, Oct. Term, 1966

Dear Sir:

The Court today entered the following order in the above-entitled case:

The motion of the respondent to require certification of additional parts of the record is granted. The expense of printing such additional parts of the record shall initially be paid by the respondent and ultimately shall abide the judgment of the Court at the conclusion of this case.

Very truly yours,

John F. Davis, Clerk, By C. T. Lyddane, Assistant.

Simon H. Rifkind, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
575 Madison Ave.
New York, N.Y. 10022

NOV 3 1966

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966

No. ~~744~~ 93

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

v.

CITIES SERVICE CO.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

Supreme Court of the United States

October Term, 1966

No. .....

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

v.

CITIES SERVICE CO.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled action on June 6, 1966.

Citations to Opinions Below

The opinion of the District Court (Pltf.'s App. 5a)* is reported at 38 F.R.D. 170 (S.D.N.Y. 1965) and is printed in Appendix B hereto, *infra*, p. 40. The opinion of the Court of Appeals is reported at 361 F.2d 671 (2d Cir. 1966) and is printed in Appendix B hereto, *infra*, p. 36.

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* Parenthetical references are to the appendices of the parties in the court below.

Jurisdiction

The judgment of the Court of Appeals was entered on June 6, 1966.* The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. In a private antitrust action where the only source of direct evidence of the conspiracy rests in defendants' files, when one of the defendants moves for summary judgment under rule 56(b), Fed. R. Civ. P., is the burden upon the defendant to show that there is no genuine issue as to any material fact for trial under rule 56(c) or is the burden upon the plaintiff to show that there is such an issue under rule 56(e)?

2. In such an action, is it an abuse of discretion to stay plaintiff from all discovery while he and each of his associates is exhaustively examined by the defendants, one after the other, and then accord him only a limited discovery of the moving defendant in aid of his opposition to the latter's motion for summary judgment?

3. Did plaintiff, in fact, sustain the burden of showing genuine issues for trial on the limited record at his disposal?

Statutes Involved

The statutory provision involved is rule 56 of the Federal Rules of Civil Procedure, 28 U.S.C. App. following §2718 (1964). Rule 56 is printed in Appendix A, *infra*, p. 33.

* On August 29, 1966, an order was signed by Mr. Justice Harlan extending until November 3, 1966 petitioner's time to file this petition.

Statement of the Case

This is a private antitrust action brought to recover $109,260,000 as treble damages sustained by plaintiff* as the result of defendants' conspiracy to boycott all dealings in Iranian oil following nationalization of Iran's oil industry in 1951. The original defendants below were six major international oil companies, British Petroleum Co., Ltd. (the former Anglo-Iranian Oil Company, which held the concession for Iranian oil prior to nationalization), Socony Mobil Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), Texaco Inc., Gulf Oil Corp. (each of which also held substantial oil concessions in the Middle East), and the respondent, Cities Service Co., which, plaintiff alleges, joined the conspiracy to boycott Iranian oil. The complaint is patterned after the complaint in a civil action, *United States* v. *Standard Oil Co. (New Jersey) et al., Civil Action* No. 86-27 (S.D.N.Y.), brought by the United States to break up the Middle Eastern oil cartel operated by the defendants other than Cities.

Following the nationalization of Iran's petroleum resources, the British adopted a policy of starving the Iranians into submission by placing an embargo on British goods and boycotting Iranian oil (Pltf.'s App. 23a, 119a). Each of the defendants other than Cities (which had no Middle Eastern reserves) respected the British position that Iranian oil was "stolen" property, and not only refused to purchase Iranian oil but cooperated in making up the deficiency of oil from other sources (Pltf.'s App. 79a, 119a).

In these circumstances, plaintiff and his associates met with Prime Minister Mossadegh and, on May 25, 1952,

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* Plaintiff died after suit was commenced and his widow as executrix has been substituted as plaintiff. We shall refer to plaintiff as if the decedent were still alive.

secured a contract from the National Iranian Oil Company which enabled them to purchase 15 million tons of Iranian oil over five years at prices substantially below the posted price for the Gulf of Persia and gave them the exclusive right to sell Iranian oil in the United States (Pltf.'s App. 90-92a). The contract was taken in the name of Consolidated Brokerage (Pltf.'s App. 86a).

Returning to New York, plaintiff and his associates contacted numerous companies, large and small, in an effort to sell their oil. In each instance, however, they were met with refusal, most often on the ground that the prospective purchaser was unwilling to deal in Iranian oil because of the threat of reprisal from the cartel companies, upon which they depended for long range supplies of oil. (Pltf.'s App. 92-101a).

After initial efforts to sell Iranian oil proved fruitless, plaintiff was introduced to Cities Service. Although a substantial company, Cities was at the mercy of the cartel because Cities owned less than half of the crude production needed to meet its daily requirements. It had been trying for years to obtain foreign production but had not succeeded. Its shortage of crude oil amounted to some 100,000 barrels per day. (Pltf.'s App. 131-32a).

On June 11, 1952, plaintiff's associates met for the first time with two Cities vice presidents. Early in these discussions, Cities expressed an interest in taking over the management of the Iranian installations. To this end, Cities desired an invitation from Prime Minister Mossadegh to W. Alton Jones, Cities' chairman of the board, to inspect the Iranian facilities with a view to their reactivation. (Pltf.'s App. 101-02a).

If the management deal went through, plaintiff's group was to receive as compensation one or two cents per barrel

on all of the oil or products taken out of Iran. In addition, plaintiff's contract was to be taken over, and there would be other fringe benefits for plaintiff's group. (*Ibid.*).

Plaintiff, armed with a draft prepared by Cities, again flew to Tehran, met with Prime Minister Mossadegh, and obtained the desired invitation. The invitation was delivered in New York on July 31, 1952, and Cities began immediate preparations for the inspection trip. (Pltf.'s App. 62a, n. 16; 102a).

In this connection Burl S. Watson, senior vice president, prepared a "secret" memorandum setting forth an outline for the formation of a management company, controlled by Cities and excluding any cartel companies, which would reopen the Iranian oil industry and receive a long term option to purchase crude oil at discount prices, as well as a first refusal on any future concessions for oil exploration in Iran (Pltf.'s App. 139a). As Watson later testified, Cities was looking for an opportunity to secure a long range supply of crude oil at production costs approaching the lowest in the world (Pltf.'s App. 133a).

On August 16, 1952, plaintiff flew to Tehran to make arrangements for living accommodations for the Cities Service party, consisting of Jones (chairman of the board), Heston (head of crude production), Frame (head of refining), Whetsel (manager of foreign operations), and Robeson (Jones' secretary) (Pltf.'s App. 103a).

On the way to Iran, Jones stopped at The Hague, where he conferred for five days with Jan Sandberg (Pltf.'s App. 155a). According to Watson, Sandberg was a member of the finance committee of Royal Dutch/Shell, a major international oil company, named in the amended complaint as one of the co-conspirators (Deft.'s App. 425a). No member of the Jones party participated in these conferences,

and no memorandum of them has been disclosed to plaintiff. Jones also telephoned Watson from The Hague to find out how many tankers would be available to Cities to move Iranian oil to the United States. Watson cabled a coded response, saying that Cities could transport 200,000 barrels a day by the end of 1954 (Pltf.'s App. 141a).

Arriving in Tehran on August 25, Jones and his party remained for approximately three weeks. Frame inspected the refinery at Abadan and found it in good shape, well-maintained since the departure of the British. Heston inspected the oil fields and found them in good condition, capable of producing a million barrels a day. Whetsel inspected the docks and loading facilities at Abadan, which he found ready for shoal-draft vessels, and the port of Bandar Mashur, which he found ready to receive deep-draft vessels (Pltf.'s App. 138a).

During their stay in Iran, Jones' assistants began preparation of a report on their inspection of the Iranian oil facilities. After several drafts, Jones added his recommendations to the final version, dated October 31, 1952 (Deft.'s App. 1a). This report concluded that two solutions to the Iranian oil problem were possible. The first, contemplating full, quick reactivation of the industry, required British cooperation, and, to this end, Jones proposed an arbitration panel comprised of British and Iranian representatives with "an experienced U.S. oilman" as chairman (Deft.'s App. 36-37a). Jones' alternative suggestion, to be put into effect if British cooperation was not forthcoming, called for the National Iranian Oil Company to enter into a long term agreement with "an American oil company" to purchase Iranian crude and develop the industry over a longer period of time (Deft.'s App. 37a).

On the return to the United States, while the group was in Paris, Carter, one of Waldron's associates, requested

Jones' assistance in persuading Secretary of the Interior, Oscar Chapman, who headed the Petroleum Administration for Defense, to support a proposed sale of Iranian aviation gasoline to the United States Air Force under plaintiff's contract. Such a sale might well have broken the blockade of Iranian oil. Jones, who fully recognized the importance of the proposed sale, told Carter that he approved the plan and would telephone Watson in New York to call Secretary Chapman. Instead, behind Carter's back, Jones cabled Watson to kill the deal. (Pltf.'s App. 147-49a). A few days later, Waldron was informed by Watson that Cities had no interest in Iranian oil. No explanation was offered. (Pltf.'s App. 146a).

History repeated itself in the Fall of 1953, when Richfield Oil Company, which was jointly owned by Cities (⅓), Sinclair (⅓) and the public (⅓), turned down plaintiff's offer to supply Iranian crude oil to make up its shortage at a most favorable price, again, without explanation (Pltf.'s App. 112-13a).

In May 1954, it came to Waldron's attention that in January 1953, Cities had made a contract with Gulf (one of the members of the cartel) for the purchase of 90 million barrels of Kuwait oil at a dollar a barrel, to be delivered at the rate of 20,000 barrels per day, with an option for still larger deliveries (Deft.'s App. 253a). It was not until Frame was deposed in 1964, however, that plaintiff learned that, while the Cities party was in Iran in August 1952, Jones had made a secret trip to Kuwait, where British Petroleum and Gulf share the oil concession. Before this information came out on Frame's deposition, the fact of such a trip was explicitly denied; it was characterized by counsel as "non-existent."

Recognizing, finally, that he could never sell any Iranian oil in the United States, plaintiff brought suit against

Cities and the cartel companies. In his complaint, which was filed on June 11, 1956, plaintiff alleged that Cities joined the other defendants in their conspiracy to boycott Iranian oil and to prevent plaintiff from exploiting his contract and that, in return, Cities received a huge quantity of Kuwait oil far below the posted price and the opportunity to participate in the Consortium which eventually took over the Iranian oil industry (Deft.'s App. 60-61a).

Before plaintiff could do anything with his complaint, defendants secured an order extending their time to answer until after they had had an opportunity to examine him, and, in the meantime, staying him from all discovery. (Pltf.'s App. 55a).

Plaintiff's deposition commenced on September 10, 1956. After he had been deposed for 62 days (comprising more than 4200 printed pages of testimony) and 825 exhibits had been marked, plaintiff moved to terminate the deposition upon the ground that defendants could no longer claim that they did not know him or the basis for his claim, and that, in consequence, the time had come when the complaint should be answered and plaintiff be permitted to have his own discovery like any other litigant. Not only did the court deny plaintiff's motion but it granted defendants 52 additional days to conclude their deposition of plaintiff and 174½ days more to depose his associates. In the meantime, the stay against any discovery by plaintiff was continued. None of the defendants had cross-moved or asked for any such relief. The order, signed on February 11, 1958, has since been cited by Professor Moore as the classic example of the means by which powerful defendants can abuse the discovery process and "stymie the action for an inordinate length of time." 4 MOORE, FEDERAL PRACTICE ¶26.13[2], at 1151-2 (2d ed. 1963).

When, finally, defendants had fully deposed plaintiff and each of his associates (except Carter) and had examined all of their papers, all of the defendants (except Cities) moved on November 1, 1963 for summary judgment upon the ground that plaintiff was disqualified by his own conduct from resort to the court and, further, that plaintiff was not injured in his business or property within the meaning of Section 4 of the Clayton Act (15 U.S.C. §15). The motion was denied (Pltf.'s App. 21a). The opinion is reported as *Waldron* v. *British Petroleum Co.*, 231 F.Supp. 74 (S.D.N.Y. 1964).

Cities' motion for summary judgment had been made earlier, on April 8, 1960, following completion of Cities' examination of plaintiff, and was still pending when the other defendants moved. The motion was supported by the affidavit of George H. Hill, Jr., soon to become Cities' general counsel. The affidavit and supporting documents sought to establish only that the Kuwait contract and the Consortium participation were not payoffs for any conspiracy (Deft.'s App. 146a, 371a). Cities did not submit an affidavit by any officer which denied participation by Cities in the conspiracy to boycott Iranian oil. W. Alton Jones, the only man who had full personal knowledge of everything Cities did with respect to Iran, remained silent. Plaintiff's allegations of conspiracy remain uncontradicted by pleading or affidavit to this day. While the motion was pending, plaintiff amended his complaint to allege simply that, at a date unknown to plaintiff, Cities joined the conspiracy to boycott Iranian oil (Pltf.'s App. 78a, 80a). Cities has ignored even the existence of the amended pleading and has never denied its allegation of conspiracy.

Upon the argument of the motion, plaintiff asked to be relieved of the stay which had prevented him from conducting discovery proceedings so that he might examine

Cities, beginning with W. Alton Jones, in aid of his opposition to the motion under rule 56(f). R. V. Whetsel, manager of Cities' Foreign Department, who traveled to Iran with Jones and actively sought participation in Iran by Cities, had already been lost to plaintiff by death on January 12, 1960. (Pltf.'s App. 131a).

About a year later, on March 30, 1961, the court announced that the motion would be considered adjourned so as to permit plaintiff to conduct pre-trial discovery in aid of his opposition to the motion (Pltf.'s App. 70a), but at a stage of the proceedings when plaintiff had had no discovery at all, the court expressed the opinion that the case against Cities "was based only on suspicion and on a gossamer inference drawn from the mere sequence of events," and announced that plaintiff's discovery would be narrowly limited (Pltf.'s App. 71-72a).

Responding to this obvious invitation, counsel for Cities argued that only one witness, George H. Hill, Jr., who had never dealt with plaintiff and had had little, if anything, to do with Cities' Iranian project, should be deposed and that only two subjects, the alleged "payoffs" for the conspiracy, should be explored. Saying that it would not "permit the plaintiff to conduct the kind of examination that ordinarily is permitted under Rule 26 and the related rules"; that, instead, it was "looking through the telescope at the other end . . . starting out with a narrow examination and then, as occasion may warrant," enlarging the examination, the court agreed to the proposed limitation of plaintiff's discovery. It was in vain that plaintiff renewed his request to examine W. Alton Jones. (Pltf.'s App. 68-70a).

The result could hardly have been more stultifying. Hill's examination proved nothing because Hill knew nothing, not having been a participant in the Iranian ven-

ture and not having been privy to Jones' thoughts and plans nor adequately informed as to Jones' activities. While this sterile exercise was going on, Jones, who knew all there was to be known about Cities' Iranian interests and what happend to them, was killed in an airplane crash.

In the circumstances, plaintiff, in May 1963, moved again for discovery under rule 56(f) in aid of his opposition to Cities' motion for summary judgment, asking specifically, this time, for the written statements which had been prepared in 1956 by Jones and his Cities Service colleagues concerning the Iranian project and for their underlying files. Cities, of course, urged that summary judgment should now be entered in its favor without further discovery. The court again held the motion under advisement for about a year until, on June 23, 1964, it granted plaintiff further but still limited discovery in aid of his opposition to Cities' motion for summary judgment (Pltf.'s App. 55-58a).

The examination of the three surviving Cities Service executives, Watson, Frame and Heston, which followed in the summer of 1964, threw a great deal more light on Cities' 1952 Iranian project, revealing, for the first time, that Cities had concluded that it could reactivate the Iranian oil industry over a period of years; that W. Alton Jones had visited representatives of the Middle Eastern oil cartel; and that Jones had secretly torpedoed plaintiff's efforts to break the blockade by means of a shipment of aviation gasoline (Pltf.'s App. 143a, 155a, 147-49a). The examination left unanswered, however, the question why, after going so far, Cities turned aside. The order was restricted in subject matter (Pltf.'s App. 156-57a). It was restricted in time to the period June 11, 1952 to November 1, 1952, even though Cities was permitted to rely upon selected documents subsequent to this period (Pltf.'s App. 17-20a).

The same dance was then repeated for the third time: plaintiff moved for further discovery not only of Cities but of the other defendants and of Carter (Pltf.'s App. 126-127a); Cities urged that summary judgment be granted without further discovery. Argument took place on February 9, 1965, and on September 8, 1965, the court granted Cities' motion and denied plaintiff's cross-motion for further discovery of Cities, Carter and the other defendants (Pltf.'s App. 17a).

REASONS FOR GRANTING THE WRIT

Summary of Argument

Plaintiff contends that, initially at least, the burden rested on Cities to demonstrate that there was no genuine issue of fact to be tried. Under the authorities, Cities could not even begin to sustain that burden without denying its participation in the conspiracy. This Cities never did. In shifting to plaintiff the burden of demonstrating the existence of a genuine issue of fact, the courts below committed error, and their decisions in that respect conflict with decisions of this Court and decisions rendered by courts of other circuits. (Point I, *infra.*)

Plaintiff contends, further, that in limiting the scope of plaintiff's discovery, the courts below acted beyond their authority. Plaintiffs in civil antitrust actions should be given wide, not narrow, discovery. Any plaintiff is entitled to liberal discovery on an issue of conspiracy for which the only source of evidence is defendants' files and testimony. In refusing such discovery, the courts below so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. (Point II, *infra.*)

Plaintiff contends, finally, that no matter who had the burden of showing the existence of a triable issue, summary judgment should not have been granted because, even on the underdeveloped record at his disposal, plaintiff demonstrated the existence of genuine issues of material fact with regard to Cities' participation in the conspiracy. (Point III, *infra.*)

POINT I

In relieving defendant of the burden of demonstrating the absence of a genuine issue of fact on its motion for summary judgment, and imposing the converse burden on plaintiff, the lower courts made a decision in conflict with decisions of other circuits.

Since the adoption of the Federal Rules of Civil Procedure, it has been consistently held that, on any motion for summary judgment under rule 56, the moving party has the burden of positively and clearly demonstrating that there is no genuine issue of fact to be tried. *National Screen Service Corp.* v. *Poster Exchange, Inc.,* 305 F.2d 647, 651 (5th Cir. 1962); *Evers* v. *Buxbaum,* 253 F.2d 356, 357 (D.C. Cir. 1958); *Caylor* v. *Virden,* 217 F.2d 739, 741 (8th Cir. 1955); *Byrnes* v. *Mutual Life Ins. Co. of N.Y.,* 217 F.2d 497, 501 (9th Cir. 1954), *cert. denied* 348 U.S. 971 (1955); *Albert Dickenson Co.* v. *Mellos Peanut Co.,* 179 F.2d 265, 268 (7th Cir. 1950); *Walling* v. *Fairmont Creamery Co.,* 139 F.2d 318, 322 (8th Cir. 1943). Under this rule, it is not incumbent upon the adverse party to show that summary judgment should not be entered, *Driggers* v. *Business Men's Assur. Co.,* 219 F.2d 292, 299 (5th Cir. 1955), and if the moving affidavits fail to deny the crucial allegations of the complaint in explicit terms, the motion must be denied. *Slagle* v. *United States,* 228 F.2d 673, 678

(5th Cir. 1956); *Woods Exploration & Prod. Co.* v. *Aluminum Co. of America,* 36 F.R.D. 107, 110 (S.D. Texas 1963); *Fuimara* v. *Texaco Inc.,* 204 F.Supp. 544, 550 (E.D. Pa. 1962), *aff'd* 310 F.2d 737 (3d Cir. 1962); *Long Island Railroad Co.* v. *New York Cent. R. Co.,* 26 F.R.D. 145, 147 (E.D.N.Y. 1960); *United States* v. *General Ry. Signal Co.,* 110 F.Supp. 422, 425 (W.D.N.Y. 1952). Thus, in *Long Island Railroad Co.* v. *New York Cent. R. Co., supra,* the court, in denying defendant's motion for summary judgment, said:

> "It is true that plaintiffs have failed to specify the facts which they contend to be in dispute, but the burden is upon the moving party to establish the facts with respect to which there is no dispute and not upon the other party to establish the facts that are in dispute. In other words, the defendant upon this motion has the burden of establishing the negative, and the plaintiffs do not have the burden of establishing the affirmative." 26 F.R.D. at 147.

Cities has neither denied by pleading nor affidavit the allegations of conspiracy set forth in the complaint. When Cities made its motion for summary judgment on April 8, 1960, it submitted an affidavit by George H. Hill, Jr., an officer who was familiar with the Cities-Gulf contract for Kuwait oil and with Cities' participation in the Iranian Consortium. The Kuwait contract and the Consortium were the two items which plaintiff had alleged in his original complaint as the payoffs for Cities' joining the conspiracy to boycott Iranian oil. Hill's affidavit and the accompanying documents attempted to establish that neither Kuwait nor the Consortium were payoffs for joining the conspiracy (Deft.'s App. 146-411a). Hill never denied that Cities had joined the conspiracy, nor has any other officer of Cities ever filed an affidavit containing such a denial. From 1960 until his death in 1962, W. Alton Jones, the

one Cities executive who had personal knowledge of everything Cities did with respect to Iran, submitted no affidavit denying Cities' part in the conspiracy. He submitted no affidavit on any issue in the case, and plaintiff's attempts to depose him were tenaciously and successfully opposed by Cities.

Effective July 1, 1963, rule 56(e) was amended to add the following two sentences:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not respond, summary judgment, if appropriate, shall be entered against him."

The notes of the Advisory Committee explained that the purpose of the amendment was to overturn a line of cases in the Third Circuit in which properly documented motions for summary judgment were denied when an issue of fact was presented by the pleadings. The Advisory Committee's notes concluded with the statement that the amendment was not intended "to affect the ordinary standards applicable to the summary judgment motion," and that, "Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied *even if no opposing evidentiary matter is presented.*" 28 U.S.C.A., Rules 52-58, 1965 Supp., p. 85. (Emphasis added.) Thus, the Advisory Committee clearly stated its intention that the strict burden upon the moving party to establish the absence of any genuine issue as to a material fact was not to be disturbed.

Despite this clear statement of the purpose of the amendment, the language of the amendment drew a sharp dissent

from Professor Moore, who expressed concern that the amendment would be more broadly construed than intended so as to shift the burden of persuasion on a motion for summary judgment from the moving to the opposing party. MOORE'S MANUAL §17.10[3], at 1290-91 (1963). Professor Moore's fear that the amendment would be used to alter the burden on summary judgment motions has been borne out in the present case. In 1961, the district court below noted that, "But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion." (Pltf.'s App. 71a). In 1964, however, the district court seized upon the rule 56(e) amendment to place the burden upon plaintiff, saying, ". . . plaintiff must—if he is to oppose successfully Cities Service's summary judgment—eventually submit 'specific facts' which 'would be admissible in evidence' [Rule 56(e)] . . ." (Pltf.'s App. 58a). No mention was made by the court of the fact that Cities had never, by affidavit or pleading, denied that it had conspired against plaintiff; instead, plaintiff was compelled to prove affirmatively that the conspiracy existed.

In its final opinion, the district court found that plaintiff had failed to meet "the new demands of Rule 56(e)" and granted Cities' motion for summary judgment (Pltf.'s App. 10a). In affirming, the Court of Appeals adopted the position of the district court that the amendment to rule 56(e) had shifted the burden of proof to the adverse party, and noted that, "it is plain that the *plaintiff* has not established the existence of any 'genuine issue as to any material fact.'" (Appendix B, p. 38, *infra.*) (Emphasis added.)

The action of the courts below squarely raises for this Court's consideration the important question of determining the standards which are to be applied on motions

for summary judgment. The Second Circuit has ruled in this case that the amendment to rule 56(e) shifted the burden of proof on summary judgment motions so as to require the opposing party to demonstrate the existence of an issue of fact and to relieve the moving party of any requirement to demonstrate the absence of any issue of fact. That ruling is in conflict with decisions of other circuits, which, since the amendment became effective, have continued to require the moving party to establish the lack of a genuine issue of fact before the opposing party is required to set forth evidentiary data showing the existence of such an issue. *Associated Hardware Sup. Co.* v. *Big Wheel Dist. Co.*, 355 F.2d 114, 121 (3d Cir. 1966); *Scott* v. *Great Atlantic & Pac. Tea Co.*, 338 F.2d 661, 662 (5th Cir. 1964); *Jacobson* v. *Maryland Cas. Co.*, 336 F.2d 72, 74 (8th Cir. 1964), *cert. denied* 379 U.S. 964 (1965); *Castlegate, Inc.* v. *National Tea Co.*, 34 F.R.D. 221, 229 (D. Colo. 1963). In *Susman* v. *South Texas Package Stores Assoc.*, 33 F.R.D. 340 (S.D. Tex. 1963), the court addressed itself to the argument that the 56(e) amendment cast a greater burden on the party opposing summary judgment:

> "Defendant-wholesalers' positions apparently are that the italicized portion of the amended rule places a greater burden on plaintiffs than did the earlier version. The Court is of the opinion that defendants read more into the rule than was intended. The comments of the Advisory Committee *expressly deny that the changes were designed to affect the ordinary standards applicable to the summary judgment motion.*" 33 F.R.D. at 347. (Emphasis in original.)

The present case, a private treble-damage antitrust action, is a classic example of the impropriety of placing the burden of proof upon the party opposing summary judgment. By failing to deny the allegation of conspiracy

and taking issue only with plaintiff's allegations as to the precise motivation for its joining the conspiracy, Cities was able to submit the affidavit of an executive who knew nothing at all about Cities' Iranian venture and whose sole concern was Cities' dealings relating to the Kuwait contract and the Consortium, and thus avoid submitting the affidavit of the only man in its organization who knew all of the facts at first hand. If Cities had attempted to satisfy the burden of proving the absence of any material issue of fact with respect to the conspiracy from an overall point of view, it would have been forced to submit the affidavit of W. Alton Jones, Cities' chairman of the board. Of course, if Jones had submitted an affidavit, then in all likelihood the district court would have permitted plaintiff to depose him. Cities did not want Jones deposed at that time; it was still concealing the facts that Jones had conferred with a representative of Shell (named as a co-conspirator) on his way to Iran; that he had visited Anglo-Iranian and Gulf in Kuwait; and that he had torpedoed plaintiff's efforts to sell Iranian aviation gasoline. When, finally, the court in 1964 permitted plaintiff to depose Cities' executives who had some knowledge of the Iranian plans, Jones was dead. There was no real substitute for Jones. His associates were not only reluctant to make admissions damaging to their company, but could, and did, claim ignorance of Jones' activities. (Pltf.'s App. 150a). Cities was thus able to enjoy the full benefit of having failed to produce an affidavit or testimony denying the crucial material fact, conspiracy.

By placing the burden of proof upon plaintiff, the court forced plaintiff to bear the consequences of Jones' silence. That ruling, we respectfully submit, flies in the face of this Court's holding in *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473 (1962), that even where full discovery by all parties has been allowed, sum-

mary judgment "should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot."

POINT II

The courts below erred in limiting plaintiff's discovery.

Even if the courts below were right in deciding that rule 56(e), as amended, shifted the burden of proof on motions for summary judgment, the case at Bar presents another important question as to the standards to be applied in granting discovery applications under rule 56(f) to adverse parties who must seek the required proof through discovery.

The rules have been liberally construed in antitrust cases to permit wide discovery, not only because of the element of public interest in private antitrust actions, *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 329 (1955); *Bales* v. *Kansas City Star Co.*, 336 F.2d 439, 443 (8th Cir. 1964), but also because of the very nature of the alleged antitrust conspiracy, in which the only source of evidence open to plaintiff is the defendants themselves. *Leonia Amusement Corp.* v. *Loew's Inc.*, 16 F.R.D. 583, 584 (S.D.N.Y. 1954); *United States* v. *General Ry. Signal Co.*, 110 F.Supp. 422, 423 (W.D.N.Y. 1952).

When, before the plaintiff has had an opportunity to engage in discovery, an antitrust defendant moves for summary judgment on the ground that there is no merit to plaintiff's claim, the plaintiff will often be unable to marshal in opposition to the motion all of the evidence which supports his claim, for much of that evidence is still within the exclusive possession of the defendants.

Consequently, discovery in aid of plaintiff's opposition to the motion must be permitted or the motion must be denied. As expressed by Professor Kaplan:

> "Under rule 56(f) the adversary need not even present the proof creating the minimal doubt on the issue of fact which entitles him to a fair trial; it is enough if he shows the circumstances which hamstring him in presenting that proof by opposition to the motion." Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961-63 (II)*, 77 HARV. L. REV. 801, 826 (1964).

The requirements of liberal discovery in antitrust actions, combined with liberal granting of rule 56(f) applications, has lead to the outright denial of summary judgment motions in cases where pre-trial discovery is not complete, even where the plaintiff was unable to sustain the allegations of his complaint. *Philco Corp.* v. *Radio Corp. of America*, 34 F.R.D. 453 (E.D. Pa. 1964); *Smith-Corona Marchant, Inc.* v. *American Photocopy Equip. Co.*, 217 F.Supp. 39 (S.D.N.Y. 1963); *cf. White Motor Co.* v. *United States*, 372 U.S. 253 (1963). *A fortiori*, the antitrust plaintiff must be afforded an opportunity for full and complete discovery if he is to be saddled with the burden of proving the existence of a genuine issue as to a material fact on a motion for summary judgment.

In the case at Bar, the district court narrowly restricted discovery. In its opinion of March 30, 1961, the court said that plaintiff's right to discovery should be limited because his claim was "insubstantial" and was based "only on suspicion and on a gossamer inference" (Pltf.'s App. 71-72a). Since this condemnation of plaintiff's case was based upon the presentation of only one side of the motion and was made before plaintiff had had any discovery at all,

plaintiff was, of course, unable effectively to refute it. Plaintiff was subsequently afforded two opportunities to conduct discovery of Cities. The first was meaningless because the witness produced by Cities knew nothing of plaintiff or Iran. The second was so limited in time and scope that plaintiff was able to learn only part of the story. One of the things plaintiff did learn, however, was that W. Alton Jones had meetings during his trip to Iran with alleged co-conspirators. Since none of Cities' witnesses was able to testify what went on at those meetings, plaintiff asked the court for discovery of the other defendants. His application was denied, and summary judgment was granted, despite the fact that even in normal circumstances such discovery would be permitted. As stated by the court in *Radio Corp. of America* v. *Rauland Corp.*, 16 F.R.D. 160, 164 (N.D. Ill. 1954):

> "It is well established that proof of conspiracy entitles the complaining party to prove the origin and purposes of the alleged conspiracy, and it must follow that discovery with regard thereto must be extensive enough to embrace the inception of the conspiracy complained of."

All of the defendants in this action are charged with having entered into one common conspiracy to boycott Iranian oil. Despite this, the courts below restricted plaintiff's discovery to Cities, treating that defendant as if plaintiff's claim against it was a separate lawsuit. The character and effect of a conspiracy, however, can only be judged after plaintiff has had the opportunity to develop the whole picture. *Continental Oil Co.* v. *Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962). Plaintiff was not given that opportunity.

POINT III

The holding of the lower courts that no issue requiring trial has been shown to exist conflicts with decisions of this Court and of other courts of appeals.

Assuming, *arguendo,* that the lower courts were justified in relieving Cities of the burden of showing that no issue requiring a trial was presented and imposing the burden on plaintiff to show the converse, and assuming also, *arguendo,* that the courts were right in limiting plaintiff's discovery, it was nevertheless error to grant summary judgment, since plaintiff, even on the limited record at his disposal, demonstrated the existence of genuine issues of fact with respect to Cities' participation in the alleged conspiracy.

There is abundant circumstantial evidence that Cities at some point in time became part and parcel of the conspiracy to boycott Iranian oil and, hence, to frustrate plaintiff's attempt to dispose of his Iranian oil and capitalize on his connections with the Iranian government: (1) the opening which plaintiff offered Cities was a golden opportunity, Cities' dream of an independent oil supply about to come true, and Cities went three-fourths of the way toward exploiting the opportunity but then, after conferring with several of the co-conspirators, stopped in its tracks and not only refused to proceed but also intervened to frustrate plaintiff's attempt to dispose of part of his oil to the United States Air Force; (2) Cities' action, taken in apparent contravention of its immediate self-interest in the premises, paralleled and aided that of the other conspirators, who were engaged in an open campaign to boycott all suppliers of Iranian oil; and (3) Cities' chairman of the board reported favorably on the prospects for American reactivation of the Iranian oil industry,

quickly with the cooperation of Anglo-Iranian Oil Company or slowly without it. After the American Petroleum Institute convention, at which the other conspirators threatened to cut off Cities' oil supplies if Cities should pursue its Iranian venture, nothing more was heard of such proposals (Pltf.'s App. 153a).

These facts alone, we submit, are sufficient under the authorities to raise a fact issue as to the existence of a conspiracy in a private antitrust action, but plaintiff went farther. He alleged that the precise inducements offered Cities by the other conspirators for Cities' refusal to deal in nationalized Iranian oil were oil from another source and a participation in the Consortium. The point which we wish to emphasize is that even without proof of the precise inducements for Cities to join the conspiracy, and regardless of whether plaintiff's beliefs on that score were mistaken, plaintiff made a *prima facie* showing of conspiracy. Under the decisions of this Court and the courts of appeals, proof that a defendant, in disregard of its immediate business interests, conformed its business behavior to the alleged conspiratorial purpose, especially when coupled with other evidence of conspiracy, constitutes a *prima facie* showing of conspiracy which will not only defeat a motion for summary judgment (which is the precise question here presented) but will, unless conclusively contradicted, support a finding in plaintiff's favor on that issue. The instant case is a particularly strong one for the application of this rule inasmuch as the general conspiratorial purpose was announced for all to read in the newspapers (Pltf.'s App. 119a). The specific application of the announced boycott to plaintiff and those dealing with him was obvious.

The district court found that (1) plaintiff had failed in his attempt to prove that the other defendants offered

Cities Kuwait oil and a share in the Consortium in order to induce Cities to join the conspiracy and (2) while Cities refused to deal with plaintiff, Cities continued to be interested in Iranian oil (Pltf.'s App. 11-12a). It held, consequently, that plaintiff had not raised a fact issue as to the existence of the conspiracy. The Court of Appeals adopted the reasoning of the District Court. Thus, in their preoccupation with plaintiff's attempt to prove the precise motives which moved Cities, the lower courts lost sight of the fact that plaintiff made a sufficient showing of conspiracy in spite of his inability to prove Cities' motives. That, we respectfully submit, was the origin of the error committed by the two courts in judging the merits of Cities' motion.

The plaintiff's burden of proof on the issue of conspiracy in a civil antitrust action has been the subject of several opinions of this Court and numerous opinions of the courts of appeals. The case law on the subject has been shaped by two considerations: (1) the difficulty of procuring direct evidence of conspiratorial intent ("agreement") because such evidence, if it exists, almost invariably is under defendants' control, and (2) the ease with which defendants, if innocent, may refute the appearance of illegality.

Among the rules which the courts have developed in aid of plaintiffs in this respect, is the rule that, in proper circumstances, an inference of conspiracy may be drawn from proof that a defendant conformed its business behavior to the business behavior of the other defendants with the effect of promoting the alleged conspiratorial purpose. Thus, this Court has held that, while conscious uniform business behavior does not conclusively establish conspiracy, such behavior is "admissible circumstantial evidence from which the fact finder may infer agreement."

Theatre Enterprises, Inc. v. *Paramount Film Distributing Corp.*, 346 U.S. 537, 540 (1954).

Such an inference is fair, for if the suspicion is unjustified, it is within the defendant's power to refute it. The refutation must begin with a denial of participation in the conspiracy. Defendant here has not made even that beginning.

In *Theatre Enterprises,* defendants had refused to license their motion pictures for first runs to plaintiff. Plaintiff, without any supporting facts, drew the conclusion that defendants' uniform action in refusing to deal with plaintiff on a first run basis must have resulted from an illegal agreement among the defendants. Defendants denied the existence of any collaboration, and claimed that their refusal to deal was based on the independent business judgment of each defendant. The trial court denied plaintiff's motion for a directed verdict, and the court of appeals affirmed a verdict for defendants, saying:

> "We think there was evidence to support both of the inferences drawn by the opposing parties to the case and thus an issue was presented which was necessarily submitted to the jury for decision." 201 F.2d 306, 313.

This Court agreed. 346 U.S. at 542. *Theatre Enterprises,* therefore, stands for the proposition that, where conscious uniform business behavior is shown but is counteracted by defendants' denials of any collaboration, a jury question is presented. How much stronger the case for a jury where, as in the instant case, plaintiff not only shows that defendant conformed its business behavior to that of the other conspirators, contrary to its immediate self-interest and in furtherance of the conspiracy, but also adduces other circumstantial evidence of conspiracy, without eliciting a denial from defendant!

Among the decisions cited by this Court in support of its holding in *Theatre Enterprises, Interstate Circuit, Inc.* v. *United States,* 306 U.S. 208 (1939), holds significance for the case at Bar. In that case exhibitors of motion pictures had invited eight distributors to impose certain restrictions on the distribution of their films. The distributors argued that no conspiracy was shown inasmuch as the invitation had been addressed to each distributor individually, but this Court rejected that argument. The Court pointed out that:

> "It was enough that, knowing that concerted action was contemplated and invited, the distributors gave their adherence to the scheme and participated in it. Each distributor was advised that the others were asked to participate; each knew that cooperation was essential to successful operation of the plan." 306 U.S. at 226.

Similarly, Cities knew that concerted action was contemplated and invited, and gave its adherence.

In *Interstate Circuit,* this Court held that the inference of conspiracy was supported and strengthened by the circumstance that defendant distributors (as Cities in the case at Bar) failed to call as witnesses any of their officers or agents who knew whether in fact an agreement had been reached among them for concerted action. 306 U.S. at 225.

The Court's holding in *Theatre Enterprises* has been applied with varying degrees of liberality by lower courts, but even under the most illiberal decisions, the case at Bar presents the fact issue of conspiracy, regardless of plaintiff's inability at this time to demonstrate the precise inducement for Cities to join the conspiracy.

In *Morton Salt Co.* v. *United States,* 235 F.2d 573 (10th Cir. 1956), the court, recognizing that parallel business

behavior does not conclusively establish agreement, emphasized that "such behavior is another item to be weighed and generally to be weighed heavily in the determination." 235 F.2d at 577. The court found that the action of one of the defendants, Deseret, in refusing, after conferring with the other defendants, to deal with an outsider was against Deseret's interest "unless it [Deseret] would benefit in other ways from this yielding to the demands of competitors." 235 F.2d at 578. "The natural inference is," the court continued, "that the action was pursuant to the conspiracy and Deseret believed that the long run benefit to it by helping maintain higher price levels was greater than this loss of raw salt business." *Ibid.* The similarity with the case at Bar is obvious: Cities would have benefited greatly from the arrangement plaintiff proposed but chose, after conferring with other conspirators, to give up its immediate advantage. The same "natural inference" that the sacrifice was made in the interest of the conspiracy must be drawn.

In *Nagler* v. *Admiral Corp.*, 248 F.2d 319 (2d Cir. 1957), three different judges of the same court that decided against plaintiff in the case at Bar upheld a complaint although it lacked a direct allegation of conspiracy, on the ground that "as to this the trier of facts may draw an inference of agreement or concerted action from the 'conscious parallelism' of the defendants' acts of price cutting and the like as the Supreme Court recognizes" (citing *Theatre Enterprises*). 248 F.2d at 325.

To the same effect is *Standard Oil Company* v. *Moore*, 251 F.2d 188 (9th Cir. 1957), *cert. denied* 356 U.S. 975 (1958) (see 251 F.2d at 210-211).

Again in *Independent Iron Works, Inc.* v. *United States Steel Corporation*, 322 F.2d 656 (9th Cir. 1963), the court interpreted this Court's holding in *Theatre Enterprises* to

mean that similarity in business conduct has probative significance if present "under circumstances which logically suggest joint agreement, as distinguished from individual action." 322 F.2d at 661. The court upheld a directed verdict for defendants on the ground that the evidence showed a decided lack of uniformity and an absence of interdependence among defendants. *Id.* at 665-66. Hence the court found that no conspiratorial character was cast on defendants' activities. *Ibid.* By contrast, the record in the instant case has ample evidence suggesting agreement and interdependence. Cities' behavior toward plaintiff is cast with an unmistakable conspiratorial quality.

In *Pittsburgh Plate Glass Co.* v. *United States,* 260 F.2d 397 (4th Cir. 1958), *aff'd* 360 U.S. 395 (1959), the court held that defendant's "conscious parallelism," in light of defendant's apparent close connection with the climax of the conspiracy, reasonably permitted the jury to infer that defendant acted in agreement with some or all of the conspirators. The court said:

> "The proposition is too elementary to require elaboration, that participation in a criminal conspiracy need not be proved by direct evidence; 'a common purpose and plan may be inferred from a "development and a collocation of circumstances."' Glasser v. United States, 1942, 315 U.S. 60, 80, 62 S. Ct. 457, 86 L.Ed. 680." 260 F.2d at 401.

In *Rushing* v. *Metro-Goldwyn-Mayer Distributing Corp. of Texas,* 214 F.2d 542 (5th Cir. 1954), the court stated its understanding that the plaintiff's burden of proof on the issue of conspiracy in a civil antitrust action "has been reduced to a point considerably below that in most civil suits," although it is still required that there be at

least circumstantial evidence reasonably supporting an inference of conspiracy. 214 F.2d at 544.

Probably the most restrictive of the authorities is *Delaware Valley Marine Supply Co.* v. *American Tobacco Co.*, 297 F.2d 199 (3d Cir. 1961), *cert. denied* 369 U.S. 839 (1962), where the court affirmed a judgment entered on a directed verdict in favor of defendants. It was plaintiff's contention that he was entitled to a jury trial on the question whether the five defendant tobacco companies had conspired to refuse to sell their products to him. The court emphasized that all of the defendants had denied expressly the existence of any conspiracy, and distinguished *William Goldman Theaters* v. *Loew's Inc.*, 150 F.2d 738 (3d Cir. 1945), *cert. denied* 334 U.S. 811 (1948), by that very fact. 297 F.2d at 206. The court held that "conscious parallelism is not yet a conclusive legal substitute for proof of conspiracy. It is circumstantial evidence the probative value of which necessarily varies with the kind of parallelism and the factual setting where it is found." 297 F.2d at 202, 203. The court held that the uniform action of the tobacco companies in refusing to deal with plaintiff, without corroborating evidence, was insufficient to support a finding of conspiracy, saying:

> "Many of the decisions in which courts find conspiracy on the basis of circumstantial evidence do so because the defendants acted in apparent contradiction of their own economic self-interest. In such cases there was evidence that the plaintiff had made a better offer than did those with whom the defendant was currently doing business, or that the plaintiff's place of business was superior to that supplied by the defendant. No better offer was proven here, nor was it shown that the plaintiff could provide facilities equal to Lipschutz or Kelly [two other distributors]." 297 F.2d at 206. (Footnotes omitted).

It is evident, then, from the court's language that the court would have arrived at the opposite result if the record in that case had contained the additional ingredients present in the instant case of (1) an announced conspiratorial purpose; (2) conflict between the individual defendant's immediate self-interest and its refusal to deal with plaintiff, while such refusal served the announced purpose of the conspiracy; (3) conferences between such defendant and other conspirators before the refusal occurred; (4) acts by defendant to frustrate plaintiff's attempt to sell to a third party; and (5) absence of a denial by defendant of participation in the conspiracy.

To summarize, under decisions of this Court and courts of appeals, the plaintiff in an antitrust action may make a *prima facie* showing of conspiracy by demonstrating that, in refusing to deal with him, a defendant conformed its behavior to that of the other alleged conspirators (*Theatre Enterprises, Inc.* v. *Paramount Film Distributing Corp.*, 346 U.S. 537 (1954)), and acted in a manner inconsistent with its own immediate economic interests and consistent with the objectives of the alleged conspiracy (*Morton Salt Company* v. *United States*, 235 F.2d 573 (10th Cir. 1956); and see *Delaware Valley Marine Supply Company* v. *American Tobacco Company*, 297 F.2d 199 (3d Cir. 1961, *cert. denied* 369 U.S. 839 (1962)). While plaintiff does not have to show that defendant communicated with the other conspirators (*Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208 (1939); *Standard Oil Co. of California* v. *Moore*, 251 F.2d 188 (9th Cir. 1958, *cert. denied* 356 U.S. 975 (1958); and see *Nagler* v. *Admiral Corp.*, 248 F.2d 319 (2d Cir. 1957)), as long as he shows that the plan and purpose of the conspiracy were made known to defendant (*Interstate Circuit, Inc.* v. *United States, supra*), his case is strengthened if he can show that defendant did in fact confer

with some of the co-conspirators before refusing to deal with him (*Morton Salt Company v. United States, supra*). Should defendant fail to deny its participation in the conspiracy, plaintiff's case is further supported and strengthened (*Interstate Circuit, Inc.* v. *United States, supra; William Goldman Theatres, Inc.* v. *Loew's Inc.*, 150 F.2d 738 (3d Cir. 1945), *cert. denied* 334 U.S. 811 (1948)). The probative value of such circumstances is to be determined by the trier of the facts (*Theatre Enterprises, Inc.* v. *Paramount Film Distributing Corp., supra; Standard Oil Company of California* v. *Moore, supra*). Conspiracy need not be established by direct evidence, but may be inferred from a development and a collocation of circumstances (*Glasser* v. *United States,* 315 U.S. 60 (1942)). The standard of proof required is considerably lower than that in most civil suits (*Rushing* v. *Metro-Goldwyn-Mayer Distributing Corp. of Texas,* 214 F.2d 542 (5th Cir. 1954)).

Or, in the terms of the action at Bar, plaintiff raised a fact issue as to the existence of a conspiracy by adducing evidence tending to show that Cities, although anxious at first to accept the deal offered it by him, made a sudden turnabout after conferring with several of the other alleged conspirators, and thereafter, in contravention of its own interests in the matter, and in obedience to the announced conspiratorial purpose, not only turned plaintiff down but used its influence to frustrate plaintiff's attempt to dispose of some of his oil to the United States government. His case is greatly strengthened by the fact that Cities failed to deny its participation in the conspiracy. Thus, under the applicable authorities, plaintiff has made a strong case for the jury. The decision of the Court of Appeals, denying him a trial, is in conflict with decisions of this Court and other courts of appeals.

CONCLUSION

The Petition should be granted.

Respectfully submitted,

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APPENDIX A

Rule 56, Federal Rules of Civil Procedure

Summary Judgment.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. [As amended Dec. 27, 1946, effective March 19, 1948.]

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. [As amended Jan. 21, 1963, effective July 1, 1963.]

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him. [As amended Jan. 21, 1963, effective July 1, 1963.]

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 376—September Term, 1965.

(Argued May 13, 1966 Decided June 6, 1966.)

Docket No. 30144

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff-Appellant,

—v.—

CITIES SERVICE CO.,

Defendant-Appellee.

Before:

WATERMAN, ANDERSON and FEINBERG,

Circuit Judges.

Appeal from summary judgment in favor of defendant in the United States District Court for the Southern District of New York, William B. Herlands, *Judge*. Affirmed.

ANDERSON, *Circuit Judge*:

This is an appeal from a final order of the District Court for the Southern District of New York granting a motion for summary judgment made by the defendant Cities Service Co. and denying the plaintiff Waldron's[1] motion under F. R. Civ. P. 56(b) for further discovery. Cities Service was one of seven major oil companies named as defendants in this treble damages action brought on June 11, 1956 pursuant to §4 of the Clayton Act, 15 U. S. C. §15 (1964 ed.). Stated in general terms, the suit concerns plaintiff's claim that, because of the conspiracy of Cities Service and the other defendants, he was prevented from exploiting his contract for the importation and sale of Iranian oil. The rather involved facts will not be recited here as they have been stated fully and with great care by Judge Herlands in two reported opinions. See, *Waldron* v. *British Petroleum Co.*, 231 F. Supp. 72 (S. D. N. Y. 1964) and *Waldron* v. *British Petroleum Co.*, 38 F. R. D. 170 (S. D. N. Y. 1965) (the decision here appealed from).

We have no question that the order below is appealable. Cities Service was the only party moving for summary judgment, and the court, in conformity with F. R. Civ. P. 54(b), entered an order dismissing the complaint against it. Thus the order is in every sense a final disposition of the suit against Cities Service and is appealable, 28 U. S. C. §1291 (1964 ed.); and there is no reason why this appeal should be withheld during the pendency of the suits against the six remaining defendants, which may not be fully disposed of for several years.

Turning to the merits, we are convinced that as the record now stands the grant of summary judgment to the

---

[1] Plaintiff died after the suit was commenced and his widow as executrix has been substituted as plaintiff. For convenience we refer to plaintiff as if the decedent were still alive.

defendant was proper. After nine years in the district court it is plain that the plaintiff has not established the existence of any "genuine issue as to any material fact." F. R. Civ. P. 56(c); see, F. R. Civ. P. 56(e). Indeed, the record is barren of any facts which would support the existence of a claim against Cities Service. *Dressler* v. *MV Sandpiper*, 331 F. 2d 130 (2d Cir. 1964).

While Judge Herlands did restrict the scope of discovery we do not think that he abused his discretion. At various times during this litigation the plaintiff advanced several divergent theories of his case by which he sought to link Cities Service to the alleged conspiracy. First it was his theory that Cities Service was "rewarded" by the others for breaking off negotiations with him concerning Iranian oil. The rewards were said to have been a favorable long term contract for the supply of Kuwait crude oil, and a participation share in the Iranian Oil Consortium. Later plaintiff abandoned that theory and adopted the hypothesis that evidence of a sudden loss of interest by Cities Service in Iranian oil during the later months of 1952 proved that Cities Service had joined with the alleged conspirators. Still later, after having discarded that theory, the plaintiff based his action on the claim that Cities Service interfered with his attempts to sell Iranian oil to the Richfield Oil Company.

Following extensive discovery by Waldron under the Kuwait and Consortium theories, Cities Service first moved for summary judgment on April 8, 1960, but the trial court adjourned the motion and granted Waldron further limited discovery. Plaintiff examined Cities Service's employee who had been in charge of the Kuwait and Consortium transactions. After this additional discovery had been completed Cities Service renewed its motion on May 13, 1963. The complaint was then amended to drop the specific Kuwait and Consortium charges and the plain-

tiff proceeded instead upon a more general allegation of conspiracy. The court again adjourned decision on the motion to permit still further discovery through the examination of several principal officers of Cities Service in order that plaintiff might have an opportunity to look for some support for his "loss of interest" theory. This included discovery of a good deal of additional correspondence. Discovery was also permitted relative to sales of Iranian oil to the Richfield Oil Company. On October 16, 1964 Cities Service again renewed its motion, and the court finally granted summary judgment in September, 1965. Despite these more than ample opportunities to develop a basis for his action, plaintiff has been unable to do so, and has failed to demonstrate the existence of any genuine issue of fact. The court quite properly denied the Rule 54(f) motion for further discovery by which plaintiff sought to engage in still another "fishing expedition" in the hope that he could come up with some tenable cause of action.

We are not unmindful that private anti-trust suits to some extent cast the plaintiff in the role of a "private attorney general" and that such suits are favored, see, e.g., *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322, 329 (1955); cf., *J. I. Case Co.* v. *Borak*, 377 U. S. 426, 432-433 (1964). Even so, it is apparent in this case that Waldron was given ample opportunity and scope in his shifting programs of discovery. The plaintiff, as a "private attorney general," may not seek indefinitely, within the period of limitations, to use the process to find evidence in support of a mere "hunch" or "suspicion" of a cause of action.

The judgment of the District Court is affirmed.

United States District Court
S. D. New York.
Sept. 8, 1965.

GERALD B. WALDRON, individually and doing business as Consolidated Brokerage, Plaintiff,

v.

BRITISH PETROLEUM CO., LTD., Cities Service Co., Socony Mobil Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), Texaco Inc., Defendants.

HERLANDS, District Judge:

The court has before it two motions. The first is the renewal of a motion by defendant Cities Service Co.—initially made in 1960—for summary judgment under Rule 56(e) of the Federal Rules of Civil Procedure on the ground that plaintiff has failed, in his affidavits, to "set forth specific facts showing that there is a genuine issue for trial."

The second motion is by plaintiff[1] for further discovery, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

The relevant facts were detailed and analyzed by this court at an earlier stage of this litigation. Waldron v. British Petroleum Co., 231 F.Supp. 72 (S.D.N.Y. 1964). The facts will now be reiterated only to the extent necessary for the disposition of the motions at bar.

---

[1] On February 9, 1965, pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, Patricia Waldron was substituted in her capacity as executrix of the last will and testament of the deceased plaintiff, Gerald B. Waldron, as plaintiff in this action.

Defendant Cities Service Co. (hereinafter Cities) first moved for summary judgment on April 8, 1960. In a memorandum opinion by this court, filed March 30, 1961, Cities' motion was adjourned for the purpose of enabling plaintiff to conduct limited pre-trial discovery. At that time, this court said:

> 1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.
>
> 2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events.
>
> 3. But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. This court has examined virtually every reported summary judgment decision rendered in this circuit since Arnstein v. Porter, 154 F.2d 464 (2d Cir. 1946), over one thousand in number. The rationale and philosophy of Arnstein v. Porter have not been attenuated by the subsequent course of decisions.
>
> 4. In view of (a) the surface complexity of the case, (b) the indirect law enforcement aspects of even this private antitrust case, (c) the very extensive pre-trial examinations of the plaintiff already conducted by the defendants and the complete absence of any pre-trial examination of any defendant by the plaintiff —it would appear to be fair to postpone a decision of the summary judgment motion and to afford the plaintiff an opportunity to engage in appropriately supervised discovery and related pre-trial proceedings.

5. Because of plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record, so insubstantial, the plaintiff will not be given carte blanche authority to conduct untrammeled pretrial proceedings. Such proceedings will be closely regulated. The usual Federal rule permitting fishing expeditions will be curtailed. A just and workable balance will be maintained between the respective interests of the opposing parties.

Following plaintiff's exhausting the discovery permitted pursuant to an order filed May 4, 1961,—limiting plaintiff to the examination of George H. Hill, Jr.—Cities again renewed its motion for summary judgment on May 13, 1963. At that time, plaintiff also moved for further discovery under Rule 56(f).

In deciding the 1963 renewal of Cities' motion for summary judgment, the court no longer was to be controlled by the rather restrictive interpretation of Rule 56 articulated by this circuit in Arnstein v. Porter, supra. Instead, the court was to be guided by two recent developments with respect to Rule 56, which had taken place since the March 30, 1961 decision herein.

The first development was the amendment to Rule 56(e), effective July 1, 1963. Although the central target of the amendment was to overcome a judicial gloss placed upon Rule 56 in the Third Circuit which had impaired the utility of the summary judgment device, 6 Moore, Federal Practice 149 (1964 Supp.), the amendment was also aimed at the line of decisions in the Second Circuit, following Arnstein v. Porter, which reflected a strict policy toward the granting of summary judgment. See Wright, Rule 56(e): A Case Study On The Need For Amending The Federal Rules, 69 Harv.L.Rev. 839, 856 (1956); United States v. Manufacturers Casualty Ins. Co., 158 F.Supp.

319, 321 (S.D.N.Y. 1957); Vermont Structural Slate Co. v. Tatko Bros. Slate Co., 134 F.Supp. 4, 5 (N.D.N.Y.1955), aff'd 233 F.2d 9 (2d Cir. 1956).

The second development was exemplified by the decision in Dressler v. MV Sandpiper, 331 F.2d 130 (2d Cir. 1964). In that case the court of appeals, in an opinion written by Judge Kaufman, undertook to resolve any doubt as to the effect of the 1963 amendment on the Second Circuit doctrine that had evolved from Arnstein v. Porter.

Judge Kaufman first made it clear that the amendment was aimed at changing the rule in this circuit as well as that of the Third Circuit. He then formulated, at 133, the criterion to be applied under the amendment in passing upon a motion for summary judgment:

> If the present case were to be decided under Civil Rule 56 as amended, it would thus seem clear that respondent's vague and conclusory allegations * * * would not be sufficient to forestall the award of summary judgment. The highly general assertions of * * * [the] answer * * *, buttressed by no *specific facts* or *evidentiary data*, are hardly the sort of *concrete particulars* which the amendments sought to require. [Emphasis added.]

Recent cases in this circuit which have reversed the granting of summary judgment have not manifested any deviation from the standards enunciated in Dressler. See United States v. Fair & Co., 342 F.2d 383, 385 (2d Cir. 1965); Miller v. General Outdoor Advertising Co., 337 F. 2d 944, 948 (2d Cir. 1964). For example, the court stated in Miller, at 948:

> We do not, by our disposition of this case, weaken the force of our recent holdings that the summary judgment procedure should be used to pierce the alle-

> gations of pleadings and screen out sham issues of fact. See, e. g., Dressler v. MV Sandpiper * * *.

In an opinion, reported 231 F.Supp. at 72, this court, in order to enable plaintiff to meet, if possible, the new demands of Rule 56(e), further adjourned Cities' motion and granted plaintiff's motion for further discovery, permitting examination of Burl S. Watson, A. P. Frame, and J. E. Heston. In allowing this further discovery, the court stated, at 94:

> Since plaintiff must—if he is to oppose successfully Cities Service's summary judgment—eventually submit "specific facts" which "would be admissible in evidence" [Rule 56(e)], plaintiff should be given another opportunity to conduct pretrial discovery.

Plaintiff has now completed the examinations of Watson, Frame and Heston. Cities again renews its motion for summary judgment.

The single issue before the court relating to Cities' motion for summary judgment is whether plaintiff's discovery has unearthed a "genuine issue [of fact] for trial" where nothing had existed before but "suspicion" and "gossamer inference drawn from the mere sequence of events."

The sequence of events to which plaintiff points as the basis of linking Cities with the alleged conspiracy is that in August, 1952, W. Alton Jones, president of Cities, allegedly expressing great interest in the prospects of reactivating Iranian oil, flew to Iran to confer with Dr. M. Mossadegh, the prime minister of Iran. Then,

> in late September, 1952, Jones returned to the United States. He appeared to have suffered a complete change of heart and mind. He refused to have any

> further dealings with plaintiff. Ostensibly he lost all interest in purchasing or managing Iranian oil [231 F.Supp. at 79-80].

Plaintiff attributes this "change of heart and mind" to the fact that somewhere between late August and early September, 1952, Cities joined the alleged conspiracy. Plaintiff earlier speculated that the alleged incentive for Cities to join the conspiracy was the promise of a contract between Cities and Gulf Oil Co. for oil from Kuwait, signed shortly after the above-noted events, or an opportunity advanced to Cities by the other defendants to participate in the oil consortium formed several years after the above-noted events.

The examinations of Watson, Frame and Heston have not produced any evidence from which a trier of fact would be permitted to infer that the Kuwait oil contract and participation by Cities in the consortium were consideration for Cities' allegedly dropping its interest in Iranian oil and joining the alleged conspiracy against plaintiff. On the contrary, the record, as it now stands, conclusively establishes that both the Kuwait contract and participation in the consortium had no connection whatever with the course of Cities' conduct with regard to Iranian oil.

Plaintiff's major premise throughout this litigation with regard to Cities has been that, for some reason, Cities did a complete turnabout with respect to its interest in Iranian oil. Not only has the evidence thus far adduced demonstrated that the alleged turnabout was not motivated for the reasons originally advanced by plaintiff, but the evidence has brought into serious doubt the existence of the major premise itself—a turnabout or change in attitude. Rather, the evidence persuasively demonstrates a consistent course of conduct by Cities with regard to Iranian oil at all times.

Granting, however, arguendo, that there is an issue of fact as to whether Cities inexplicably changed its mind about Iranian oil, such an issue is insufficient as a matter of law to constitute a "genuine issue for trial." From a possible inference that there was an unexplained change of mind on Cities' part, a trier of fact would not be permitted to draw the further inference that the change of mind was caused by a conspiratorial connection between Cities and the alleged co-conspirators.

The crucial facts which plaintiff must produce in order to survive Cities' motion for summary judgment are evidentiary data tending to prove that Cities became a party to the alleged conspiracy. These evidentiary data have not been forthcoming. Even the "gossamer inference" that existed in 1961 has become attenuated into nothingness as a result of the pre-trial record developed during the last four years.

Plaintiff has been permitted to examine all of those persons, still living, who accompanied Jones to Iran in August, 1952 and who would be able to link Jones' activities at that time with the alleged conspiracy.

The examinations, however, have done no such thing. Plaintiff maintains, however, that—so long as there is the slightest question as to Jones' motive in allegedly abandoning his interest in Iranian oil—there is a material issue of fact remaining to be tried and, hence, that defendant's motion for summary judgment must be denied.

In so arguing, plaintiff relies heavily on Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962). Although Poller antedates the 1963 amendment to Rule 56(e) of the Federal Rules of Civil Procedure, it is unnecessary for the disposition of the present case to determine whether the result in Poller would have been the same after the 1963 amendment.

The facts in Poller, simplified for purposes of the present motion, are as follows. Plaintiff owned a broadcasting station in Milwaukee, affiliated with the Columbia Broadcasting System (CBS) network. Plaintiff claimed that, as part of a conspiracy to drive plaintiff out of the Milwaukee broadcasting market, CBS purchased the plaintiff's only competitor in Milwaukee and then cancelled its (CBS's) affiliation agreement with plaintiff (pursuant to an option clause in the affiliation agreement), ultimately causing plaintiff, no longer able to compete, to liquidate at distress prices.

The *only* question was whether CBS's purchase of plaintiff's competitor and cancellation of the affiliation agreement was for an illegal purpose or motivated by legitimate business judgment. The facts of purchase, cancellation and their having directly caused injury to plaintiff were not disputed.

In holding that the granting of summary judgment was improper in Poller, the court stated, at 473, 82 S.Ct. at 491:

> We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of "even handed justice."

Plaintiff also relies upon Cross v. United States, 336 F.2d 431 (2d Cir. 1964), a decision which post-dates the 1963 amendment to Rule 56(e). In that case, as in Poller, the district court's granting of summary judgment was reversed as "particularly inappropriate where 'the inferences

which the parties seek to have drawn deal with questions of motive, intent and subjective feelings and reactions.'" But in Cross, as in Poller, the *only* issue was to determine the purpose or motivation behind certain undisputed acts.

Plaintiff's argument (authority for which it relies upon Poller, Cross, and other similar cases) is essentially this: if plaintiff can raise an issue of fact as to whether a defendant who has been, independently of plaintiff, pursuing a course of conduct harmonious with that of plaintiff—and incidentally inconsistent with that of a conspiracy directed against plaintiff—, reversed that course of conduct so that it then became inconsistent with plaintiff's interests and consistent with those of the conspiracy, then plaintiff has an action for conspiracy against that defendant which is immune against a motion for summary judgment.

In all of those cases relied upon by plaintiff, however, where the credibility of witnesses was in issue, all that stood between plaintiff and a victorious verdict was a favorable determination by the fact trier of the sole issue of credibility.

However, in the present case, the issue of credibility (if there be one) is whether Cities did change its attitude toward Iranian oil. If, arguendo, the jury should find that there was a switch in Cities' attitude, such a finding—without further evidence linking Cities to the alleged conspiracy and the alleged injury to plaintiff—would be insufficient as a matter of law to support a verdict in plaintiff's favor.

On that evidence alone Cities would be entitled to a directed verdict at a trial. It is now entitled to summary judgment. Schwartz v. Associated Musicians of Greater N. Y., Local 802, 340 F.2d 228 (2d Cir. 1964); Dressler v. MV Sandpiper, supra; Scolnick v. Lefkowitz, 329 F.2d 716 (2d Cir.), cert. denied, 379 U.S. 825, 85 S.Ct. 49, 13 L.Ed.2d 35 (1964).

Although the court has determined that there is not a "genuine issue for trial" and that Cities is thus entitled to summary judgment, the court will enter summary judgment only "if appropriate." Fed.R.Civ.P. 56(e).

The next question, therefore, is whether summary judgment dismissing the complaint against Cities is to be entered now or whether Cities' motion for summary judgment is to be again postponed in order to grant plaintiff further discovery under Rule 56(f). See Kaplan, Amendments of the Federal Rules of Civil Procedure, 1961-1963 (II), 77 Harv.L.Rev. 801, 826-27 (1964).

In view of the dual policies of favoring private antitrust actions, see, e.g., J. I. Case Co. v. Borak, 377 U.S. 426, 432-433, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964); Monarch Life Ins. Co. v. Loyal Protective Life Ins. Co., 326 F.2d 841, 845, 846 n. 2 (2d Cir. 1963), cert. denied, 376 U.S. 952, 84 S.Ct. 968, 11 L.Ed.2d 971 (1964), and of protecting a plaintiff's right to his day in court, this court has heretofore granted plaintiff's motions under Rule 56(f). See the earlier decision of this court in this litigation, 231 F.Supp. at 94.

In so doing, the court has been equally aware of a countervailing policy against the undue harassment of a litigant through a spurious law suit. A defendant, no less than a plaintiff, is entitled to the equal protection of the court.

The case against Cities has gone far enough. More than five years have elapsed since Cities first made this motion for summary judgment. Plaintiff has had ample time and opportunity to discover and present "concrete particulars" demonstrating that there is a genuine issue for trial. At this late day plaintiff still cannot point to "specific facts or evidentiary data." Dressler v. MV Sandpiper, supra, 331 F.2d at 133. The court "is convinced to a legal certainty" that plaintiff has no case against Cities. Cf. Arnold v. Troccoli, 344 F.2d 842, 845 (2d Cir. 1965).

Defendant Cities' motion for summary judgment dismissing the complaint as to it is hereby granted.

Plaintiff's motion for further discovery under Rule 56(f) is hereby denied.

So ordered.



ERWIN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~744~~ 53

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

—against—

CITIES SERVICE CO.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Certain pages have been removed from this document as they are of a confidential nature and fall within the scope of the order of William B. Herlands, U. S. District Court Judge dated December 13, 1962.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 744

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

—against—

CITIES SERVICE CO.,*

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Opinions Below

The unanimous opinion of the United States Court of Appeals for the Second Circuit affirming the decision of the United States District Court for the Southern District of New York is reported at 361 F. 2d 671 (2d Cir. 1966) and is printed in Appendix B to the petitioner's brief at pp. 36-39.

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* The following defendants remain parties to this action: British Petroleum Co., Ltd., Socony Mobil Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), and Texaco, Inc. Petitioner's case against these other defendants is still pending in the United States District Court for the Southern District of New York. Summary judgment was granted and affirmed in favor of one defendant only—Cities Service Co.

The opinion of the District Court (Herlands, *J.*) is reported at 38 F. R. D. 170 (S. D. N. Y. 1965) and is printed in Appendix B to the petitioner's brief at pp. 40-50 and in Pltf's App. 5a.*

Questions Presented

1. Is summary judgment appropriate under Rule 56 of the Federal Rules of Civil Procedure where the movant has conclusively demonstrated that there is no genuine issue of fact to be tried in a litigation pending 9½ years, and plaintiff, after extensive discovery, has utterly failed to produce any evidentiary data indicating that a genuine issue of fact does exist?

2. Should a petition for certiorari be granted to review an alleged misapplication of summary judgment procedures when such an issue has never been asserted in either the District Court or the Court of Appeals below?

3. On a motion for summary judgment under Federal Rule 56, is it an abuse of discretion for the Court to deny plaintiff further discovery after

(a) he has extensively examined the movant and its records on every claim he has asserted,

(b) movant has conclusively demonstrated that there is no issue of fact to be tried,

(c) plaintiff has not produced any evidentiary data supporting his claims, and

(d) where the court "is convinced to a legal certainty" that plaintiff has no case against the movant whatsoever?

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* Parenthetical references are to the appendices to the briefs of the parties in the Court below which are part of the record filed in this Court.

Statement of the Case

In this Court, petitioner once again speculates whether respondent Cities Service ("Cities") *may have* conspired with other defendant oil companies to boycott petitioner's marketing of nationalized Iranian oil in the United States, and seeks reversal of the unanimous judgments below in order to pursue his speculations.

During nine-and-a-half years of litigation in this case, petitioner's counsel's fertile imagination has produced no fewer than four sweeping speculations—all of them demolished—concerning Cities' relations with the other defendants, without a grain of evidence or a specific fact to support any of them.

These contentions have been completely rejected by every judge who has considered the matter.

In fact, the record below is filled with assertions which petitioner has made and then abandoned when Cities demonstrated that petitioner's conclusory allegations were wholly without foundation.

It should also be noted at the outset, that petitioner has examined Cities officials on every matter relevant to the issues he has at any time asserted. After all this examination, petitioner was brought to the point where he no longer asserted a fact but asked a question: "Did Cities conspire?" At this point, Cities had long since met its burden of demonstrating that there was no genuine issue of fact to be tried. Petitioner totally failed to present any specific facts or to point to any material issues for trial. He did not even have a particularized question to ask, but relied on an ultimate conclusory query—"Did Cities conspire?"—as though that constituted the assertion of a proposition of

fact the denial of which created a factual issue which could defeat summary judgment.

This case has been exhaustively considered by at least four judges below. Judge Herlands, of the United States District Court for the Southern District of New York, who lived with this case for six years, and who granted petitioner opportunity after opportunity to examine Cities' officials and documents, finally concluded after painstaking consideration that he was "convinced to a legal certainty" that petitioner had no case against Cities whatsoever, and granted respondent's motion for summary judgment which had been pending for five years.

The Second Circuit unanimously affirmed Judge Herlands' decision and found that "We are convinced that as the record now stands the grant of summary judgment to the defendant [Cities Service] was proper. After nine years in the district court it is plain that the plaintiff has not established the existence of any 'genuine issue, as to any material fact.' F. R. Civ. P. 56(c); see F. R. Civ. P. 56(e). Indeed, the record is barren of any facts which would support the existence of a claim against Cities Service." (Petition pp. 37-38; 361 F. 2d at 672.)

Petitioner asserts *for the first time before this Court* that the District Court and the Court of Appeals somehow misapplied the summary judgment procedures under Rule 56 of the Federal Rules by "relieving defendant of the burden of demonstrating the absence of a genuine issue of fact on its motion for summary judgment, and imposing the converse burden on plaintiff". (Petition, p. 13)

Petitioner is fighting a strawman which he has created.

Neither the District Court nor the Court of Appeals for the Second Circuit decided that Cities did not have to demonstrate that there was no triable issue of fact in this

case. Rather, both courts found that *Cities had made that very demonstration.* Through Waldron's deposition, his concessions and admissions below, and the undisputed documents from Cities' files, Cities was entitled to summary judgment because petitioner's case against Cities was thus shown to be wholly without merit.

In order to claim that the District Court and the Court of Appeals deliberately changed and revolutionized the summary judgment procedures of Rule 56 (and that their opinions thus conflict with those of every other court, Petition pp. 13-19; 22-31) petitioner has been forced to distort and mis-characterize the entire factual record below and the opinions themselves of both the District Court and the Court of Appeals.

In arguing that both the District Court and the Court of Appeals placed the entire burden of proof on petitioner, petitioner neglects to cite or refer to even a single affidavit or exhibit submitted by Cities Service in the ten years of litigation. Petitioner would have it appear that all that Cities did was serve a naked notice of motion for summary judgment and that the courts then turned to petitioner and required him to produce specific facts to oppose this unsupported notice.

Nothing could be further from the truth. The 461-page appendix submitted by Cities below (which is included in the record here) represents only part of the materials produced by Cities in support of its summary judgment motion, and it is on those documents and those excerpts from Waldron's own deposition and admissions that Cities moved for summary judgment.

It was those indisputable facts and records which indicated that petitioner had no case against Cities. It was after this demonstration by Cities that the lower courts looked

to petitioner to supply any evidentiary facts at all to support any claim against Cities and to refute Cities' massive proof.

Thus, petitioner's position that Cities has never contended that it did not engage in the alleged conspiracy, but merely challenged petitioner's "proof of the precise inducements for Cities to join" (Petition, pp. 23, 14) is incredible, and completely ignores the nine and a half years of litigation that preceded his petition. To take but one example, Cities argued in its brief, in the Court of Appeals:

> "[The] undisputed record . . . compels the conclusion that Cities never engaged in the conspiracy plaintiff alleges."

Petitioner's argument also misconstrues Rule 56 of the Federal Rules of Civil Procedure. Petitioner appears to assert that the Courts below looked only to Rule 56(*e*) and required petitioner to come forward with evidentiary facts to defeat Cities' motion for summary judgment (e.g. Petition, p. 17).

Rule 56(e) provides in part:

> "when a motion for summary judgment is made *and supported as provided in this rule,* an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." (Emphasis added.)

Rule 56(c) provides in part:

> "The judgment sought shall be rendered forthwith *if the pleadings, depositions, answers to interrogato-*

ries, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

What petitioner ignores is the fact that Cities had demonstrated, pursuant to Rule 56(c) that there was no issue of fact and that it was entitled to judgment. Cities provided precisely the kind of "support" that Rule 56(e) requires.*

Accordingly, Cities having shown there was no factual issue for trial, and having fully supported its motion, petitioner could not rest upon the "mere allegations . . . of his pleading" but was required under Rule 56(e) to provide specific facts showing that there was a genuine issue. This he has failed to do. The combination of Cities' demonstration and petitioner's failure to counter Cities' materials led the courts below to grant and affirm Cities' summary judgment.

The incontrovertible and uncontroverted documentary record compiled below, petitioner's abandonment of his allegations and petitioner's three critical admissions clearly demonstrate that Cities was properly granted summary judgment below.

The three critical admissions were:

1. That Cities was not a conspirator at all the crucial times relevant to petitioner's assertions;

2. That Cities maintained a consistent course of conduct with regard to Iranian oil and never lost interest or

* The Court of Appeals referred to both Rule 56(c) and 56(e) in holding that there was no genuine issue of fact. Petition p. 38; 361 F. 2d at 672.

had a change of heart, as petitioner had repeatedly asserted; and

3. That Cities persisted in opposing the interests of the alleged conspirators and monopolists and "watched with resentment when the Iranian pie was cut up" without the independent, "have-not" oil companies like Cities gaining significant participation.

Throughout his petition here, as in his arguments below, petitioner ignores the basic summary judgment principle which was fatal to his case: that summary judgment may not be defeated by mere conclusory allegations concerning ultimate facts contained in a pleading.

To demonstrate the spurious nature of plaintiff's petition concerning summary judgment on the facts of this case, it will be necessary to describe in some detail the long history of this litigation which led to Cities being granted summary judgment five years after its Rule 56 motion was originally made.

History of the Litigation

1. The Complaint

On June 11, 1956, Gerald Waldron, a Denver food broker, filed a complaint against Cities and six other oil companies, seeking $109,260,000 in treble damages. He claimed that defendants had conspired to frustrate his efforts to sell expropriated or nationalized Iranian crude oil in the United States under an alleged contract which he obtained from the National Iranian Oil Company on May 25, 1952. That alleged contract was made after the Iranian Government had nationalized foreign oil properties.*

* It should be noted that a serious cloud on title to Iranian oil existed during the pendency of the bitter dispute between Great Britain and Iran after nationalization in 1951.

Petitioner concedes that his complaint was, insofar as it alleged an oil cartel, essentially copied from a complaint in a civil action brought by the United States. *United States* v. *Standard Oil Co. (New Jersey), et al.*, Civil Action No. 86-27 S. D. N. Y. (Petition, p. 3). He does not make clear, however, that Cities was not a party defendant to that action. The Government's complaint did *not* allege that *Cities* was a participant in any Middle East oil conspiracy. Indeed, Cities was not even mentioned in that complaint.

In his complaint Waldron made clear the distinction between Cities and the other defendants.

The complaint began by alleging that a conspiracy in restraint of interstate and foreign commerce in oil (which allegedly began in 1928) was, in 1934, joined by all the named defendants *"except Cities Service"* (Complaint, June 11, 1956, ¶¶8, 9, 10f; Deft's App. 48a-54a).*

Pursuant to the alleged conspiracy, all the defendants, *other than Cities Service,* allegedly have controlled foreign production and supplies of oil, divided foreign and domestic producing and marketing territories, fixed prices, controlled available tanker facilities, and engaged in other antitrust violations (Complaint, June 11, 1956, ¶¶8, 9 and 10; Deft's App. 48a-63a).

Even in speaking of his own experience with the so-called crude oil cartel, plaintiff cast Cities in a peripheral and peculiar role. In May 1951 the Iranian Government nationalized the oil properties of defendant Anglo-Iranian (now British Petroleum) (Complaint, June 11, 1956, ¶10(i); Deft's App. 55a-56a). According to the complaint, defen-

* All references preceded by "Deft's App." refer to the Appendix of Defendant-Respondent below, which is part of the record filed here; references preceded by "Pltf's App." refer to the Appendix of Plaintiff-Appellant below, which is also part of the record filed here.

dants *"other than Cities"* then agreed not to deal in Iranian oil until they could preserve the allocations established by conspiratorial agreement (Complaint, June 11, 1956, ¶10(i) (2); Deft's App. 56a-58a).

After plaintiff obtained his alleged oil contract on May 25, 1952 from the National Iranian Oil Company, plaintiff claimed defendant Anglo-Iranian (now British Petroleum) threatened him and others that legal action would be taken against them if they dealt in the nationalized oil (Complaint, June 11, 1956, ¶10(i) (2); Deft's App. 56a-58a). Plaintiff claimed Anglo-Iranian (British Petroleum) and other defendants *"excepting Cities"* instituted a boycott of Iranian oil in order

> "to force the Iranian Government to return its oil concessions, if not to Anglo-Iranian in whole, at least to the defendants jointly, *excepting Cities Service,* under such terms as would preserve the essential allocations previously agreed upon . . ."
> (emphasis added)

(Complaint, June 11, 1956, ¶10(i) (2); Deft's App. 57a-58a).

The complaint alleged that plaintiff never sold any of the oil to which he had access under his contract, and that his inability to do so was the result of an alleged boycott. He claimed that defendants, *"other than Cities Service"* (i.e., New Jersey Standard, Texas, Socal, Gulf and Socony) "refused to purchase Iranian oil from plaintiff"; threatened their "subsidiaries, agents or purchasers with being "barred from purchasing petroleum and products owned or controlled by defendants"; and "caused normal and customary financial services necessary to the transaction of international business to be denied to plaintiff" (Complaint, June 11, 1956, ¶10(i) (2, 3, 4, 5); Deft's App. 56a-59a).

Plaintiff claimed that his efforts to market Iranian oil were finally frustrated by the entry on October 29, 1954 of defendants *other than Cities Service* (i.e., Anglo-Iranian (British Petroleum), New Jersey Standard, Socal, Texas, Gulf and Socony) into a Consortium which divided up substantially all Iranian oil production among these defendants (Complaint, June 11, 1956, ¶10(i) (9); Deft's App. 62a).

2. The Unusual Role of Cities Service As Alleged

As has been seen, plaintiff cast Cities in a unique and peripheral role in his complaint. He specifically alleged that Cities had no oil interests in the Middle East prior to 1952, and that it was not a member of the alleged oil cartel. (Complaint June 11, 1956, ¶10(i) (6); Deft's App. 59a-60a).

In fact, plaintiff pleaded that Cities, as an independent, sought to aid plaintiff in his Iranian venture in the face of the alleged boycott of the other defendants.

Plaintiff maintained that he approached Cities in July of 1952 and that Cities "indicated . . . a great interest in purchasing [plaintiff's] entire supply and obtaining a managerial contract for all Iranian oil exploitation and production from the Iranian Government" (Complaint, June 11, 1956, ¶10(i) (6); Deft's App. 59a). In August of 1952, W. Alton Jones, then president of Cities, went with the plaintiff and several staff aides to Iran and inspected the oil facilities there. According to plaintiff, Cities then "proposed to the National Iranian Oil Company that over a course of years Cities Service would exploit and manage the Iranian oil resources . . ." (Complaint, June 11, 1956 ¶10(i) (6); Deft's App. 59a-60a).

A single subparagraph of the complaint then stated plaintiff's charges against Cities.

3. Plaintiff's Charges Against Cities Service: Kuwait as a Bribe and Consortium as a Reward

According to the complaint, Cities joined the alleged conspiracy for the first time "during late August or early September, 1952" (Complaint, June 11, 1956, ¶10(i) (6); Deft's App. 60a) and was enticed by the alleged conspirators Gulf and Anglo-Iranian into breaking off negotiations with plaintiff concerning Iranian oil. Plaintiff asserted two reason for Cities' alleged behavior.

First, the complaint charged that Gulf and Anglo-Iranian bought off Cities by offering it a long-term supply of crude oil from Kuwait at a favorable price which Cities accepted (Complaint, June 11, 1956, ¶10(i) (6); Deft's App. 60a-61a). According to the complaint

> "*At this time and by these acts* Cities Service, without the knowledge of plaintiff, entered into combination and conspiracy with the other defendants . . ." (emphasis supplied)

Secondly, plaintiff attempted to link Cities to the conspiracy by alleging that "as a further consequence of this conspiracy" Cities was allowed by the other defendants to "purchase a participation" in the Iranian Oil Consortium which was entered into more than two years later by defendants *other than Cities Service* (Complaint, June 11, 1956, ¶10(i) (6), (9); Deft's App. 61a-62a).

4. Waldron's Deposition

Plaintiff's bitter complaints about his deposition (Petition, p. 8) have nothing to do with Cities Service or this petition.

Cities' examination of the plaintiff on his $109 million claim lasted only 3½ days and was conducted on October

26-29, 1959. In Mr. Waldron's examination, he repeatedly conceded that but for two alleged acts—the alleged Kuwait deal and the alleged offer to Cities of a Consortium participation—he had no complaint against Cities and would not have joined Cities as a defendant in this action.

"Q. Do you put them [Cities Service] into the conspiracy which you allege, which you say began in 1928?

"A. No, sir.

"Q. You don't put them into this conspiracy until a very much later date, is that right?

"A. That's correct.

"Q. And what is the later date that you pick as the date on which you said they joined this conspiracy of the other defendants?

"A. The latter part of 1952 or the first part of 1953.

"Q. And what is the event which you believe justified you in saying that they joined this conspiracy?

"A. The event was when they made the arrangements with Gulf Oil Corporation to take oil from Kuwait.

"Q. It is that event which led you to believe that Cities Service joined the conspiracy?

"A. As well as their ending up in the International Oil Consortium in Iran.

"Q. That came later?

"A. Yes.

* * *

"Q. The event that you know of is the making of the contract with the Gulf Oil Company?

"A. Yes, sir.

"Q. And that is why you put Cities Service into this complaint as a defendant; is that right?

"A. That's one reason.

"Q. And the other reason is the Consortium?

"A. The Consortium. That's all the reasons that I know of at this time.

* * *

"Q. And of this morning you are telling me—and I assume truthfully—that the two events which you identify as causing you to name Cities Service as a defendant are the contract with Gulf and the entry into the Consortium?

"A. Yes, sir.

(Deposition of Gerald B. Waldron, Deft's App. 85a-86a).

* * *

"Q. Isn't that a correct statement of affairs, that with respect to the entire conspiracy recited in subdivisions 8 and 9, [of the complaint] down to Kuwait, down to the making of the Kuwait contract, you have no complaint with respect to Cities Service?

"A. In general, I would say that is correct, sir.

(Deposition of Gerald B. Waldron; Deft's App. 102a).

"Q. But for those two events that have already been mentioned, have you any evidence to suggest that Cities Service was a party to a conspiracy or did any acts to further a conspiracy to divide foreign producing and marketing territories?

"A. I don't know.

"Mr. Lane: The question is, have you any?

"A. (Continuing) No.

"Q. But for those two events, have you any evidence that Cities Service was party to a conspiracy or did any acts in furtherance of a conspiracy to maintain and correlate domestic and world prices of petroleum and products?

"A. The same answer.

"Q. No?

"A. Yes.

"Q. And but for these two events, have you any evidence to suggest that Cities Service was a member of a conspiracy or did acts in furtherance of a conspiracy to control imports of petroleum and petroleum products into the United States?

"A. No."

(Deposition of Gerald B. Waldron; Deft's App. 110a-111a).

The complaint and depositions established that Cities was interested in something other than the purchase of a few cargoes of Iranian oil, which, if anything, is all plaintiff had to sell.

The complaint alleged that Cities' proposal to the Iranians covered management of the entire Iranian oil industry. And Waldron testified on his deposition:

"We learned that Cities Service Company was interested in taking over the refinery at Abadan and all of the Iranian oil installations.

* * *

"Q. Was it your impression that you generated this notion of taking over the refinery and managing the whole Iranian oil business?

"A. No.

"Q. You discovered that to be there when you first contacted the Cities Service people?

"A. Not on the first contact with them.

"Q. But shortly thereafter?

"A. Some time thereafter."

(Deposition of Gerald B. Waldron; Deft's App. 80a).

"Q. Did Cities Service ever negotiate with you for the purchase of your oil under your contract with NIOC?

• • •

"A. I am trying to understand what you mean by the word 'negotiate'.

"Q. Did they offer to buy some of your oil under your contract, or all of it under your contract?

"A. The only way I can express that, Judge,* is that it was understood that they would take oil under our contract, which in turn would become part of a larger overall contract which they would negotiate with the Iranians.

• • •

"Q. Did they ever negotiate with you for the purchase of oil under your contract independent of any other relationship they might have with the Iranian supply?

"A. No."

(Deposition of Gerald B. Waldron; Deft's App. 99a-110a).

5. The First Episode in Cities Service's Motion for Summary Judgment: April 8, 1960

Plaintiff's conjecture about Kuwait oil and the Consortium was wholly and totally wrong. On his deposition, plaintiff testified that he joined Cities as a defendant in this colossal $109 million antitrust action on the basis of a newspaper clipping which plaintiff read in *1954* which stated that a deal had earlier been consummated between Cities and Gulf on Kuwait oil and on a snatch of conversation in plaintiff's presence in August or September 1952 by

* Refers to Simon H. Rifkind, attorney for Cities, who was conducting the examination.

W. Alton Jones, then president of Cities, who allegedly stated that he had had an offer for oil from across the Gulf, presumably Kuwait, at $1.00 a barrel (Deposition of Gerald B. Waldron; Deft's App. 87a-94a).

Plaintiff conceded that he had no oral or written evidence to support his allegation that Anglo-Iranian (British Petroleum) and Gulf conspired to make an offer of Kuwait oil to Cities. *He was "guessing."* He also *"guessed"* that the offer was made in August or September 1952, and he admitted Jones did not say when the offer was received (Deposition of Gerald B. Waldron; Deft's App. 88a-89a).

As for the Consortium, plaintiff admitted he had nothing to support his allegation—nothing in writing, no conversation. His empty response to a request for specific information was only, "The events speak for themselves"—an inference plaintiff drew "from the fact that [he believed] Cities Service was offered, was permitted to purchase a participation in the Consortium." (Deposition of Gerald B. Waldron; Deft's App. 95a-96a).

Plaintiff was wrong on both Kuwait and Consortium, as he and his counsel both know now.

i) ***Kuwait***

Plaintiff entirely mistook the timing and nature of the Kuwait contract and made a hasty and ill-informed guess. The documentary evidence demolishing plaintiff's speculations was overwhelming. It established that Gulf and Cities began negotiating for the purchase by Cities of Kuwait oil as early as *1948,* and that the essential contract terms were buttoned up before Cities even heard of the plaintiff, let alone talked to him.

Discussions began in 1948; price and delivery terms were reached in early 1951; the detailed price formula was

agreed on in early 1952 and a draft of the contract which contained the essential terms embodied in the final contract, was approved by both sides in June, 1952—all before Cities had its first contact with plaintiff.

Ironically, Cities' documents proved that on the very day plaintiff met Cities personnel for the first time, July 8, 1952, the Operating Committee of Cities formally approved the proposed agreement (Exhibits 2-28 in Support of Cities' Motion for Summary Judgment, April 8, 1960; Deft's App. 168a-280a; Affidavit of George H. Hill, Jr. April 8, 1960; Deft's App. 154a-161a).

ii) ***Consortium***

Similarly, plaintiff's allegation—admittedly based upon plaintiff's guess—that Cities was further rewarded by the alleged conspirators by being offered a participation in the Consortium was also destroyed by documentary evidence.

It established that Cities never became a member of the Consortium!

It further established that Cities' *opportunity* to participate was not the result of agreement with other defendants—but was the result of an invitation to participate in the Iranian Oil Consortium extended to the entire oil industry by the United States Department of State.

Cities' application was approved by Price Waterhouse & Company, which was designated by the State Department as a "qualified and disinterested party" to pass upon the qualifications of applicants for a participation. Cities was advised of its acceptability by the State Department. The minuscule percentage allocated to Cities—.45 of 1%—was made after intense dispute among the applicants, and after informal consultation with Mr. Herbert Hoover, Jr., the Under Secretary of State who, in effect, resolved the dis-

pute against the position taken by Cities. The other defendants played no role in this allocation.

Moreover, it is clear that Cities fought unsuccessfully to gain more than a minimal interest in the Consortium, and, failing in that pursuit, elected not to participate at all (Exhibits 29-59 in support of Cities' Motion for Summary Judgment, April 8, 1960, Deft's App. 281a-370a; Affidavit of George H. Hill Jr. April 8, 1960, Deft's App. 161a167a).

On April 8, 1960, Cities moved for summary judgment based on the indisputable documentary evidence which demolished plaintiff's hasty guesses about Kuwait and Consortium.

6. Judge Herland's initial opinion of March 30, 1961

We submit that Judge Herlands should have granted Cities' motion for summary judgment at this point. If he had done so at that time, the past five years of frustrating, time-consuming, expensive litigation could have been avoided. There could be no doubt that on the record and documents submitted at that time, there was no material issue of fact as to Cities, and summary judgment was in order.

Judge Herlands, however, felt constrained by the then narrow construction which decisions in the Second Circuit had placed on Rule 56. Judge Herlands stated:

> "But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. This court has examined virtually every reported summary judgment decision rendered in this circuit since *Arnstein* v. *Porter,* 154 F. 2d 464 (2nd Cir. 1946), over one thousand in number. The rationale and philosophy of *Arnstein* v. *Porter* have not been attenuated by the subsequent course of decisions."

(Opinion, March 30, 1961, Pltf's App. 71a).

The Court observed, however:

> "1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to its claim against the defendant Cities Service Co.
>
> "2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events." *

(Opinion, March 30, 1961, Pltf's App. 71a).

Judge Herlands nevertheless adjourned Cities' motion for summary judgment until plaintiff had an opportunity to engage in discovery and related pre-trial proceedings. The Court noted:

> "Because plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record, so insubstantial, the plaintiff will not be given carte blanche authority to conduct untrammeled pre-trial proceedings. . . . The usual Federal rule permitting fishing expeditions will be curtailed. A just and workable balance will be maintained between the respective interests of the opposing parties."

(Opinion, March 30, 1961, Pltf's App. 72a).

Judge Herlands was more than fair to the plaintiff. Despite the fact that plaintiff's claims were so insubstantial, he refrained from granting summary judgment and afforded plaintiff an opportunity to attempt, through appropriately supervised discovery, to find any material

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* That finding warranted the striking of the attorney's signature to the complaint as against Cities Service. Rule 11, Federal Rules of Civil Procedure.

which could bolster his assertions so as to withstand Cities' summary judgment motion.

Plaintiff was permitted to examine George H. Hill, Jr. of Cities on the only allegations concerning Cities in plaintiff's complaint: "(a) the making of the Agreement dated January 26, 1953, between Cities Service Company and Gulf Oil Corporation, for the sale and processing of Kuwait oil; and (b) the acquisition by Cities Service Company of the opportunity to become a member of the Iranian Oil Consortium." (Order, Herlands, J., May 3, 1961. Pltf's App. 69a). Hill was the Cities employee who had been in charge of both Kuwait and Consortium.

Plaintiff examined Mr. Hill for six days, on October 10, 11, December 17, 27, 1962; January 10 and February 27, 1963. Mr. Hill's testimony demonstrated beyond question that plaintiff's suspicious guesses were simply wrong.

7. Plaintiff Abandons the Kuwait and Consortium Theories

Since the Kuwait and Consortium theories were the sole reasons for plaintiff's joining Cities as a defendant, it is strange that the plaintiff's petition contains scant reference to Cities receiving the Kuwait contract as a bribe or the Consortium opportunity as a reward.

The reason is that plaintiff has abandoned his claim and junked his original complaint, because the Hill deposition and the documentary record had demolished his claim.

Indeed, as to the "Consortium as a reward to Cities" theory, plaintiff conceded below:

> "[I]n fact, Cities watched with resentment when the Iranian pie was ultimately cut up [through the Consortium] by the seven international majors in a manner characterized by Cities as creating a monopoly for

these companies." Affidavit of Samuel M. Lane, September 15, 1964, p. 20; Pltf's App. 146a.

After seven years of litigation, plaintiff accordingly had hit rock bottom. Without a bit of evidence to continue his case, and faced with the overwhelming documentary refutation produced by Cities, plaintiff shed his Kuwait and Consortium speculations and embarked on a different tack designed to frustrate Cities' attempts to end this litigation.

8. Plaintiff Asserts a New Theory: Turnabout—Cities' Alleged Loss of Interest in Iranian Oil

Plaintiff now turned to a new theory explaining Cities' role in the alleged conspiracy as follows:

According to plaintiff, in September 1952, Cities executed a 180° turn and changed its position concerning Iranian oil. This complete turnabout, plaintiff maintains, occurred between the time W. Alton Jones, then president of Cities, went to Iran and the time of his return to the United States. According to plaintiff, when Mr. Jones was in Iran in August 1952 (on invitation of Premier Mossadegh to investigate resuscitating the Iranian oil industry), Cities was deeply interested in Iranian oil. And, says plaintiff, when Mr. Jones reached Paris, in late September 1952, he indicated that Cities was no longer interested in Iranian oil. Plaintiff asserts: although Cities had the entire Iranian oil industry in its grasp, it terminated its relations with the plaintiff and dropped its interest in Iranian oil. From this alleged fact, plaintiff leaped to the conclusion that this "turnabout" evidenced Cities joining the alleged conspiracy.

None of these allegations appeared in the complaint. Nor did the plaintiff have any evidence to support his allegations.

In fact, plaintiff's own contemporaneous behavior makes it clear that in 1952, 1953 and 1954 he drew none of the inferences he asked the courts below to draw from Cities' failure to take over the Iranian oil industry. For throughout the period when Cities' alleged loss of interest took place, plaintiff maintained the most cordial relations with Cities.

Thus, after returning from Iran—after plaintiff was allegedly aware of Cities' alleged loss of interest—he attended a dinner party with Cities officials (Deposition of Gerald B. Waldron; Deft's App. 115a-118a). In March of 1953, plaintiff testified, he and an associate of his, Mr. Nelson, called upon Mr. Watson of Cities, related their business troubles and asked if Cities might compensate them for the time they had spent in connection with the Jones trip to Iran (Deposition of Gerald B. Waldron; Deft's App. 122a-129a).

As to the meeting with Watson, plaintiff testified that he had nothing but the most cordial feelings towards Cities:

> "Q. Did you threaten to sue him? [Mr. Watson]
> "A. No, sir.
> "Q. Did you indicate to him that if he didn't pay you you would take any kind of reprisals against him?
> "A. No, sir.
> "Q. Did any such thing cross your mind?
> "A. No, sir.
> "Q. And when you left the office, you and Nelson felt that it was a rather easy meeting?
> "A. Yes.
> "Q. You were quite pleased?
> "A. Yes."

(*Id.*; Deft's App. 128a).

Nor was this the end of cordial relations between Waldron and Cities. In April of 1953 he and his family had a

very cordial and friendly time with Mr. Lowe of Cities in Denver. (*Id.;* Deft's App. 133a-134a).

Several months later, Waldron came to Cities and asked to be permitted to sell chemicals to Cities (*Id.;* Deft's App. 136a-137a).

Again, in 1954, plaintiff had another "cordial" meeting in New York at Cities' offices where he again offered to sell various products to Cities (*Id.;* Deft's App. 137a-139a).

Mr. Waldron was asked on his deposition:

> "When did the cordiality which you had expressed to Cities Service curdle into hostility?"

(*Id.;* Deft's App. 141a).

Waldron replied that this occurred only:

> "After we heard about the transaction with Gulf [in 1954]." (*Id.;* Deft's App. 141a-142a).

Plaintiff, by his conduct, thus demonstrated that he never dreamed of bringing suit against Cities simply because it failed to take over the Iranian oil industry. He brought suit only when he leaped to his now thoroughly demolished conjecture about the Kuwait contract.

In short, plaintiff now asks this Court to reverse summary judgment by drawing an inference of alleged change of heart, boycott and conspiracy from facts which contemporaneously and *ante litem motam* failed to move plaintiff to the untenable conclusion upon which he now relies.

But, as pointed out below, plaintiff is barred from making this argument. For, in the Courts below, after having spent six days examining Cities on the alleged turnabout, plaintiff *conceded* that there was no change of heart. There was no turnabout. There was no change of position. See pages 28-31, *infra.*

9. Cities' Motion for Summary Judgment, Second Episode: May 13, 1963

Cities renewed its motion on May 13, 1963. At that point, plaintiff had even less to go on than he did when he first filed his complaint. For, although the plaintiff had conducted extensive examination of George H. Hill, Jr. of Cities, he had not advanced beyond the stage he had reached in 1961, when Judge Herlands noted that "the naming of Cities Service Company as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events."

In opposition to Cities' renewed motion, plaintiff could not point to a single specific fact he had gleaned in the three years since Cities' first made its motion which indicated he was entitled to a trial.

10. Plaintiff Amends His Complaint

Nevertheless, plaintiff amended his complaint and dropped his specific allegations concerning Kuwait and the Consortium. In their stead, he substituted a more vague and even less substantial concoction. The new allegations were belied by his own *ante litem motam* contemporaneous conduct. He alleged:

> "Defendants Anglo-Iranian, Socony, Socal, Jersey, Texas and their co-conspirators Gulf and Royal Dutch, with the aid of others, secretly threatened, induced and conspired with defendant Cities Service to break off all dealings with plaintiff and not to proceed further with its demonstrated interest in dealing in Iranian petroleum and products, including the management of certain aspects of the Iranian petroleum industry." (Amended Complaint, June 28, 1963, ¶13(g), p. 19; Pltf's App. 80a).

In place of the two specific allegations in plaintiff's original complaint, plaintiff's counsel substituted a series of hypothetical questions:

> Did Cities Service conspire for some unknown consideration?
>
> Did Cities Service conspire for *no* consideration?
>
> If Cities Service did not join a conspiracy, why did Cities Service "pull out" of Iran? (Stenographer's Minutes, Argument of May 27, 1963, p. 14; Deft's App. 420a-424a). See also Opinion, Herlands, J., June 23, 1964, pp. 40-41; Pltf's App. 56a).

As Judge Herlands noted, in an opinion dated June 23, 1964, "seemingly modifying its earlier accusation that there was a payoff to this defendant, plaintiff restates his position: 'The essential question remains did they conspire. They could conspire for absolutely no consideration'." (Opinion, June 23, 1964; Pltf's App. 56a).

11. Judge Herland's opinion of June 23, 1964

Nevertheless, plaintiff persuaded Judge Herlands not to grant Cities summary judgment, without first providing the plaintiff with every opportunity to discover materials relevant to his assertions which might produce specific facts indicating a genuine issue of material fact:

> "Plaintiff contends that, in order to substantiate its claim that Cities Service was bought off and to flush out evidence as to what constituted the payoff, he must have further discovery.
>
> • • •
>
> "Since plaintiff must—if he is to oppose successfully Cities Service's summary judgment—eventually submit 'specific facts' which 'would be admissible in

evidence' [Rule 56(e)], plaintiff should be given another opportunity to conduct pretrial discovery.

"Plaintiff will be allowed to examine Burl S. Watson [the Chief Executive of Cities], A. P. Frame and J. E. Heston, all of Cities Service Co., in accordance with the order to be settled on June 30, 1964." (Opinion, June 23, 1964, Pltf's App. 56a, 58a).

And so, once again Cities' summary judgment motion was adjourned.

The second discovery order permitted the plaintiff to inquire on the alleged issue of whether Cities' alleged change of position was the result of a conspiracy with other defendants. The discovery order encompassed conversations and communications during the period when, plaintiff alleged, Cities' change of heart occurred—June 11, 1952 through November 1, 1952. The order granted examination concerning communications between Cities and any other defendant pertaining to:

"(a) The two issues defined in the Court's Order filed May 4, 1961; [Kuwait and Consortium]

(b) Conversations and communications, written or oral, from on or about June 11, 1952, to, on or about, October 1, 1952, between defendant Cities Service Company and any other defendant pertaining to:

(1) Waldron, Brown, Nelson, Bentley, Zoes, or Carter;

(2) The refining, marketing, distributing, producing or managing of Iranian oil;

(3) Plaintiff's proposed deal, contract, agreement or other arrangement with the Iranian Government;

(4) *The subject of defendant Cities Service Company's giving up, terminating, dropping or discon-*

tinuing negotiations with the Iranian Government in regard to any of the matters mentioned in item (2) supra; [Emphasis added]

(Order, Herlands, J., July 9, 1964; Pltf's App. 18a-19a). Examination was also ordered concerning internal communications within Cities' organization between June 11, 1952 and November 1, 1952 pertaining to all of these items.

Plaintiff deposed Burl S. Watson on July 27-31, 1964; A. P. Frame on July 23-24; 1964, and J. E. Heston of Cities Service on August 3-4, 1964.

Over 700 pages of transcript were taken and more than 140 documents were marked.

The depositions of Cities Service officials and the contemporaneous writings demonstrated beyond any doubt what Cities has maintained from the beginning of this action—that Cities' interest in Iranian oil continued after September 1952, that Cities did not have any change of heart as the plaintiff alleged, and that Cities continued to search for a solution to the British-Iranian dispute long after Waldron went back to Denver.

Indeed, the documented record destroyed plaintiff's theory that Cities became a conspirator when it had a "change of heart". For plaintiff's basic premise was wrong—the documentary evidence established that Cities never *had* a change of heart!

Thus, the documented record is clear that, immediately after his trip, Jones reported to high State Department officials and engaged in continuing discussions with them, as well as with the Iranian Ambassador to the United States and with the United States Ambassador to Iran (Hill Supplemental Affidavit, May 20, 1960, Exhibits 65, 67, 69, 70, 77 and 80; Deft's App. 371a-374a, 383a, 385a, 388a-391a,

402a, 407a-408a). In addition to corresponding and meeting with these officials, he also wrote to Premier Mossadegh as late as July 10, 1953, conveying his suggestions for solving the vast and complex British-Iranian oil dispute (*Id.*, Exhibit 81; Deft's App. 409a-411a).

In January 1953, after the alleged "change of position", Jones sent copies of a legal opinion which he had obtained from John W. Davis to influential members of the incoming Eisenhower administration—the Secretary of State and the Attorney General. The opinion declared that Iran was correct in its contentions in the dispute over expropriation and that the position which plaintiff ascribes to the alleged conspirators was wrong (*Id.*, Exhibits 72 and 73; Deft's App. 394a-398a). Strange conduct for a co-conspirator to engage in! Nothing could have placed Cities in greater conflict with the alleged conspirators than these activities!

In addition, in November 1952, Jones had Cities furnish Iran with spare parts for the Abadan refinery (*Id.*, Exhibit 66; Deft's App. 384a). In October 1952, he had Cities officials send technical advice to the National Iranian Oil Company to aid them in operating their refinery (*Id.*, Exhibits 60 and 62; Deft's App. 375a, 378a). In November and December 1952, Cities prepared a group of key technical personnel to go to Iran to help in reviving oil production. Plans concerning the lending of such technical personnel were drawn up and transmitted to the Iranian Ambassador to the United States and to Iranian officials abroad in December 1952—again after the alleged "change of position". These efforts continued until July 1953, when Cities Service informed Iran that the United States State Department had refused to approve the project (*Id.*, Exhibits 61, 68, 69, 74, 76, 77, 78, 79 and 80); Deft's App. 376a, 386a-387a, 388a, 399a, 401a-408a).

And there was more. See pages 34-37, *infra*.

But apparently this was convincing enough to plaintiff. "Change of Position" was soon to follow "Kuwait" and "Consortium", into Limbo.

12. Plaintiff Recants Again: The Turnabout or Change of Position Claim—That Cities Lost Interest in Iran After October 1952—Is Not Only Abandoned, But Reversed

Plaintiff completed his examination of Cities and examined the numerous documents produced. Then plaintiff made his most startling reversal in a litigation already covered with the debris of his abandoned contentions: *he asserted that Cities did not change its position, and that Cities did not drop its interest in Iranian oil.*

In his counsel's affidavit, sworn to on September 15, 1964 at page 20, the plaintiff maintains:

> *"It does not happen to be the fact, however, that Cities lost interest in Iranian oil.* Contrary to what plaintiff was told, Jones (President of Cities) continued to take a 'keen interest' in Iranian oil, as Watson, himself, admitted (10823); a special 'Iranian room' was set up at Cities' New York office and put in charge of a young Iranian woman who looked after the files (10883, 10970);" [emphasis added] (Affidavit of Samuel M. Lane, September 15, 1964; Pltf's App. 146a.)

This concession followed the piling up of argument upon argument, and affidavit upon affidavit, in which plaintiff relied on the contention that Cities suddenly and mysteriously abandoned its interest in Iranian oil, and that an inference of conspiracy should be drawn from this "change of attitude", this "180-degree turn".*

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* Plaintiff's repeated contentions on "change of attitude" are quoted and summarized in Affidavit of Edward N. Costikyan, December 4, 1962; Deft's App. 416a-419a and in Stenographer's Minutes, Argument of May 27, 1963, pp. 12-14, Deft's App. 420a-424a.

Plaintiff's agreement that Cities did not lose interest in Iranian oil marked the end of plaintiff's last "gossamer inference." For, when the unfounded premise of Cities' change-of-heart disappeared, there was not even a shadow from which plaintiff could draw a thread of conspiracy.

Change-of-heart, like the Kuwait and consortium speculations, had led to years of fruitless and wasteful litigation. Once again, Cities had been put to the expense and time of accompanying plaintiff on a wild goose chase in search of an hallucinatory conspiracy.

13. Plaintiff's Last Gasp: The Richfield Oil Hallucination

Undaunted by his 0 for 3 batting average, plaintiff's counsel lunged onward to another suspicion.

Plaintiff maintains that he attempted to sell oil to the Richfield Oil Company in the summer of 1953 (Petition, p. 7). Plaintiff neglects to inform the court that these negotiations were conducted after his alleged contract giving him access to Iranian oil had expired.

In any event, plaintiff asserts that Richfield's refusal to purchase oil *may have been* the result of interference by Cities. Plaintiff does not allege that it *was* the result of such interference.

Nor can he. For plaintiff's suspicion as to Richfield is totally unsupported by a single fact.

Mr. Waldron, on his deposition, admitted that at the time he drafted the complaint he had no factual basis whatsoever to make the Richfield charge, nor did he have any factual basis to support that charge at the time of his deposition on October 26, 1959:

> "Q. I am asking you what evidence you have, written or oral, that Cities Service brought about Richfield's decision with respect to Iranian oil.
>
> "A. None as yet."

(Deposition of Gerald B. Waldron; Deft's App. 114a, 97a-98a).

Nevertheless, Judge Herlands permitted the examination of Cities by its officials, Watson, Frame and Heston, on all conversations and communications from June 11, 1953 to September 30, 1953 between Cities and Richfield and any defendant pertaining to the negotiations between plaintiff and Richfield Oil Corporation concerning the purchase of Iranian oil. Similarly, internal communications among Cities Service personnel, concerning the same subject matter, were ordered disclosed.

Again, an empty allegation based on unfounded suspicion and on speculation without the barest factual support, led to an expensive and extensive search for a non-existent cause of action—and not one shred of evidence.

14. Plaintiff's Admissions and Cities Service Documents Demolish the Richfield Conspiracy Suspicion

Plaintiff's claim, without any factual support, is that Cities, in some unspecified manner, pursuant to the alleged conspiracy induced Richfield to stop negotiating with Waldron for Iranian oil in the summer of 1953. It is clear, however, from plaintiff's admissions and from documentary evidence submitted on behalf of Cities below, that Cities was not a conspirator in 1953, or at any time.

As noted, Waldron himself admitted on his deposition on October 26, 1959 that he had no evidence that Cities interfered with the negotiations with Richfield, and had possessed no evidence in this regard at the time his complaint was framed (Deposition of Gerald B. Waldron, Deft's App. 97a-98a, 114a). And, after examining Mr. Watson, Mr. Frame, Mr. Hill and Mr. Heston plaintiff could not point to any evidence whatsoever of any communication between Cities and Richfield or between Cities and

the defendants relating to Waldron's dealings with Richfield. Accordingly, there was not and is not a single evidentiary fact to support the Richfield accusation.

The lack of the specific facts which are needed to defeat summary judgment under Rule 56(e) was not the only fatal weakness in plaintiff's position. In addition, plaintiff failed to cope with his own admissions and the documentary record which together demolished the Richfield contention.

According to plaintiff's original complaint, Cities did not become a conspirator until late August or early September, 1952. And, in plaintiff's reply brief filed on November 4, 1964, in opposition to Cities' motion for summary judgment, plaintiff admitted that the complaint was wrong and that by October 31, 1952 Cities was still not a conspirator. Plaintiff said:

> "Plaintiff does not claim that Jones was acting on behalf of a conspiracy when he sought the invitation [July, 1952] or when he went to Iran [August, 1952], or when he wrote the conclusions to his draft report on October 31, 1952 (Plaintiff's Ex. CS-119)" (Plaintiff's Reply to Cities Service's Submission in Support of its Motion for Summary Judgment, November 4, 1964, p. 12; Deft's App. 460a-461a).

The October 31, 1952 report contained Mr. Jones' conclusion that Cities could not participate in the Iranian oil situation—and that the problem could not be solved—unless the Iranian Government arranged with the British to compensate them for the nationalization of oil properties, because it was not possible to reactivate the Iranian oil industry without British cooperation to insure that tankers would be available to transport Iranian oil, and European markets, which were controlled by the British,

would be available to distribute this oil. See pp. 55-59, *infra.*

According to plaintiff, when Jones reached his crucial conclusion that Cities would not engage in the Iranian Oil dealings without assurances of British tankers and British aid—Cities was *not* acting as a conspirator! ("Plaintiff does not claim that Jones was acting on behalf of a conspiracy . . . when he wrote the conclusion to his draft report on October 31, 1952"; *Ibid.*)

Nor can Cities be tagged as a conspirator at any time after the Jones report of October 31, 1952.

Plaintiff, as noted earlier, reversed his field: no longer did he claim that Cities lost interest in Iranian oil in 1952. On the contrary, he asserted that:

> *"It does not happen to be the fact, however, that Cities lost interest in Iranian oil.* Contrary to what plaintiff was told, *Jones continued to take a 'keen interest' in Iranian oil, as Watson, himself, admitted* (10823) . . ." [Emphasis added] (Affidavit of Samuel M. Lane, September 15, 1964; Pltf's App. 146a).

By plaintiff's own admission, then, Cities maintained its pre-October 31, 1952 nonconspiratorial interest in Iran after October 31, and the documents evidence this continuing nonconspiratorial interest and continuing direct communications with the Iranians through July of 1953, at least—the very time of the Waldron-Riehfield conversations!

But the documentary record goes farther. It establishes that Cities never joined the alleged conspiracy.

Thus, *on February 18, 1954,* Cities personnel conferred with the Under Secretary of State, who was directing American efforts to solve the difficult Iranian situation.

The document reproduced in this Brief at pages 35-36 is within the scope of the order of William B. Herlands, United States District Judge, dated December 13, 1962, "no person shall disclose documents or testimony relating to the Iranian Oil Consortium produced or given by or on behalf of defendant Cities Service Company, or information obtained from such documents or testimony, to any person other than the parties, their counsel, the Court or representatives of the Executive Branch of the United States Government until twenty days after notice of intent to disclose said documents, testimony or information shall have been served upon the United States Attorney for the Southern District of New York and upon counsel for the parties herein."

The contents of this document accordingly may not be disclosed to any persons other than the parties, their counsel, the Court, or representatives of the Executive Branch of the United States Government. All other persons seeking disclosure of the contents of this document must comply with the procedural provisions outlined in Judge Herlands' order.

um would foster monopoly and exclude the independent oil companies and "have-nots" from Iranian oil development!

The plaintiff relied upon this very memorandum in opposing Cities' summary judgment motion and in his counsel's affidavit, stated:

> "In fact, Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies (Pltf's Ex. CS-40)." (Affidavit of Samuel M. Lane, September 15, 1964; Pltf's App. 146a).

Cities' complaints about the proposed Consortium plan and the role of the independents continued until the spring of 1955, when Cities declined to join the Consortium because the participation offered to it was so miniscule.

In light of the documentary evidence and plaintiff's own admissions, his contention that Cities induced Richfield not to deal with plaintiff in the summer of 1953, thereby joining the other defendants in a conspiracy to frustrate his efforts to market Iranian oil becomes absurd. Plaintiff must assert the incredible hypothesis that although Cities was a nonconspirator throughout the period in question, it nevertheless joined the alleged conspiracy for an instant of time in order to prevent Richfield from purchasing oil from plaintiff.

It is incredible that, in the course of Cities' admittedly single, uniform, consistent nonconspiratorial pattern of conduct, Cities, pursuant to and as part of the alleged conspiracy it opposed, quietly engaged in a little coercion on Richfield Oil to prevent Richfield from purchasing Iranian petroleum from plaintiff under an expired contract. This

wild speculation is unsupported by any evidence and is rebutted by all of the available evidence.

Faced with these indisputable facts, plaintiff's claim defies rational definition.

15. Cities' Motion for Summary Judgment, Third Episode: October 16, 1964

Cities renewed its motion for the third time in October, 1964. The motion was argued for the third time in February, 1965. The decision was rendered in September, 1965.

The incontrovertible facts established by the documentary record having demolished plaintiff's speculations nine and a half years after his litigation against Cities Service was begun, plaintiff's case against Cities Service was dismissed. Judge Herlands, who had lived with the *Waldron* case for six years* and had seen each of the plaintiff's fanciful speculations demolished, finally granted Cities, motion for summary judgment.

In his opinion Judge Herlands noted that Federal Rule 56(e) had been amended since the case had begun, to overcome the restrictive judicial interpretation placed on the summary judgment rule in the Second and other circuits. The 1963 amendments to the Federal Rules require specific facts or evidentiary data to be presented by a party opposing summary judgment. Judge Herlands had given the plaintiff broad opportunities to discover the specific facts which he would have to submit in order successfully to oppose Cities' overwhelming demonstration that it was entitled to summary judgment.

Judge Herlands, in granting Cities' motion, stated:

> "The single issue before the court relating to Cities' motion for summary judgment, is whether plaintiff's

* The case had been referred to Judge Herlands for all purposes on May 1, 1959.

discovery has unearthed a 'genuine issue [of fact] for trial' where nothing had existed before but 'suspicion' and 'gossamer inference drawn from the mere sequence of events.'"

(Opinion, September 8, 1965; Pltf's App. 10a-11a.)

Summarizing plaintiff's position, Judge Herlands noted that plaintiff relied on the sequence of events, claiming that an alleged "change of heart and mind" of Cities showed that Cities had joined the alleged conspiracy.

Judge Herlands summarized the results of plaintiff's exhaustive examination of every living person who had accompanied Cities' President Jones to Iran in August 1952, and all those who would be able to link Jones' activities at that time with the alleged conspiracy as follows:

"The examinations of Watson, Frame and Heston have not produced any evidence from which a trier of fact would be permitted to infer that the Kuwait oil contract and participation by Cities in the consortium were consideration for Cities allegedly dropping its interest in Iranian oil and joining the alleged conspiracy against plaintiff. On the contrary, *the record, as it now stands, conclusively establishes that both the Kuwait contract and participation in the consortium had no connection whatever with the course of Cities' conduct with regard to Iranian oil.*" (*Id.;* Pltf's App. 11a-12a) (emphasis added).

Judge Herlands then dealt with the heart of plaintiff's revised complaint:

"Plaintiff's major premise throughout this litigation with regard to Cities has been that, for some reason, Cities did a complete turnabout with respect to its interest in Iranian oil. *Not only has the evidence*

thus far adduced demonstrated that the alleged turnabout was not motivated for the reasons originally advanced by plaintiff [Kuwait and consortium] *but the evidence has brought into serious doubt the existence of the major premise itself—a turnabout or change in attitude. Rather, the evidence persuasively demonstrates a consistent course of conduct by Cities with regard to Iranian oil at all times."* (*Id.*, Pltf's App. 12a) (emphasis added).

(Judge Herlands apparently overlooked plaintiff's concession that there had been no turnabout, discussed at pp. 30-31, *supra*.)

Judge Herlands was explicit on what elements were missing from plaintiff's position:

"The crucial facts which plaintiff must produce in order to survive Cities' motion for summary judgment are evidentiary data tending to prove that Cities became a party to the alleged conspiracy. *These evidentiary data have not been forthcoming. Even the 'gossamer inference' that existed in 1961 has become attenuated into nothingness as a result of the pretrial record developed during the last four years.*

"Plaintiff has been permitted to examine all of those persons still living, who accompanied Jones to Iran in August, 1952 and who would be able to link Jones' activities at that time with the alleged conspiracy.

"The examinations, however, have done no such thing." (*Id.*, Pltf's App. 12a-13a) (emphasis added).

The Second Circuit affirmed Judge Herlands' decision unanimously, and pointed out that plaintiff had "advanced several divergent theories of his case by which he sought to link Cities Service to the alleged conspiracy." The Court

also noted that petitioner had been granted extensive discovery on three different occasions and on each of the theories which he had asserted. Finally, the Court found that "The record is barren of any facts which would support the existence of a claim against Cities Service," and concluded:

> "Despite these more than ample opportunities to develop a basis for his action, plaintiff has been unable to do so, and has failed to demonstrate the existence of any genuine issue of fact. The court quite properly denied the Rule 56(f) motion for further discovery by which plaintiff sought to engage in still another 'fishing expedition' in the hope that he could come up with some tenable cause of action." (Petition, p. 39; 361 F. 2d at 673.)

Summary of Argument

Respondent Cities Service Co. contends that the courts below properly found that it had demonstrated that there was no genuine issue of fact to be tried in this case. This decision was based on hundreds of pages of documents and affidavits submitted by Cities, petitioner's deposition, petitioner's concessions and admissions in the lower courts, and the undisputed record. In view of Cities' demonstration, the lower courts looked to petitioner to produce evidentiary data to support any claim against Cities or to refute Cities' overwhelming documentation. Petitioner totally failed to do so, even after extensive discovery, and the courts below then correctly granted summary judgment for Cities. Nothing in the petition for a writ of certiorari challenges or refutes Cities' demonstration, and there is no genuine factual issue remaining in the case. (Point I, *infra.*)

Respondent also contends that in addition to lacking substantive merit, petitioner's main argument is also proce-

durally defective. Petitioner never previously raised the contention he makes here—that the District Court and the Court of Appeals relieved Cities Service of the burden of demonstrating that there was no genuine issue of fact and imposed the converse burden on petitioner. The lower courts never addressed themselves to this issue since it was never presented below by petitioner, and he should not be permitted to raise that issue here for the first time. (Point II, *infra.*)

Finally, respondent contends that the district court did not abuse its discretion in denying petitioner further discovery after he had extensively examined Cities on every claim he had asserted at any time. Cities had conclusively demonstrated that there was no issue of fact to be tried, and petitioner failed to produce any evidentiary data supporting his assertions after nine and one-half years of litigation. Indeed, the district court stated that it was "convinced to a legal certainty" that petitioner had no case whatsoever against the respondent. The denial of further discovery was entirely proper, and the Court of Appeals correctly affirmed. (Point III, *infra.*)

POINT I

Nothing in the Petition for a Writ of Certiorari refutes Cities' demonstration or the decisions below that there is no genuine issue of fact to be tried.

Plaintiff's petition has little to do with the facts in the case at bar. Indeed, only four pages of the petition attempt to set out any specific facts in order to show that summary judgment should not have been granted to Cities. (Petition, pp. 4-7.) It is to that section of the petition which we now turn.

Assuming every one of petitioner's assertions there found to be true, with the exception of the assertions which are demonstrably false, there still remains no triable issue, and the courts below were clearly correct in granting Cities' summary judgment.

a) *The Demonstrably False Assertion*

The demonstrably false assertion is the repeated statement ascribing to Mr. Jan Sandberg some position with the Royal Dutch Shell Company, an alleged co-conspirator, and petitioner's conclusion that the conference between Alton Jones (Chairman of Cities' Board) and Sandberg on Jones' way to Iran in August 1952 is a crucial indicator that Cities was part of the alleged conspiracy:

> "On the way to Iran, Jones stopped at The Hague where he conferred for five days with Jan Sandberg. According to Watson, Sandberg was a member of the finance committee of Royal Dutch/Shell, a major international oil company, named in the amended complaint as one of the co-conspirators. No member of the Jones party participated in these conferences, and no memorandum has been disclosed to plaintiff." (Petition, pp. 5-6.)

> "Cities, although anxious at first to accept the deal offered it by him [petitioner], made a sudden turnabout after conferring with several of the other alleged conspirators. . . ." (Petition, p. 31.)

This assertion is repeatedly made and heavily relied upon by petitioner. (Petition, pp. 5-6, 18, 22, 30, 31.)

The assertion is demonstrably false.

Petitioner's assertions as to Sandberg are so improper and incorrect that the references in the petition would be an attempt to deceive this Court if it were not the product of gross ignorance of the record.

The Sandberg issue was thoroughly demolished below. The facts are these.

During the deposition of Mr. Burl S. Watson, then the Chief Executive Officer of Cities, plaintiff's counsel, Mr. Beshar, told Mr. Watson and defense counsel *off the record* that he had done research and discovered that Sandberg was a member of the finance committee of Royal Dutch Shell. This colloquy took place at the start of the morning session of the Watson deposition on Thursday, July 30, 1964. Thereafter, shortly after the morning session began, Mr. Beshar asked Mr. Watson the question:

> "Were you aware at the time that Mr. Sandberg was a member of the Finance Committee of Royal Dutch Shell?"

Watson's answer was, "I do not know when I became familiar with his position in Royal Dutch Shell. I know now that he has such a position or that he has had it in recent years. I cannot remember whether I knew it back in 1952 or not" (Deft's App. 425a).

But it is clear that when Watson answered Beshar's question, he was merely accepting Beshar's word as to the role of Sandberg. This is confirmed by the record of Friday, July 31, 1964, where Beshar stated:

> "*I*, through some research discovered the night before last (Wednesday) that Sandberg was a member of the Finance Committee of Royal Dutch Shell." [emphasis supplied] (Deft's App. 426a).

Beshar was completely and totally misinformed, and the record is incontrovertible in this regard. In the affidavit of Simon H. Rifkind of October 16, 1964, it was noted that:

> "I am informed and believe that, in response to inquiries to the "Royal Dutch Shell" group in New York as to Mr. Sandberg's alleged relationship to those companies, Cities Service was advised that he had no such relationship at any time; and specific inquiry to Mr. Sandberg's secretary, who has been with him for many years, as to whether Mr. Sandberg had ever held any position with Royal Dutch Shell and specifically as to whether he had been an officer, director, member of the Board or on its Financial Committee during the period 1952 through 1954, resulted in a reply, copy of which is annexed hereto as Exhibit A, stating that Mr. Sandberg has never had any such position, and specifically, that he was not an officer, director, member of the Board or Financial Committee in 1952, 1953 or 1954. In addition, I was also informed and believe a search made by Mr. Connolly and Mr. MacMurray, of the Central Inquiry Office of Standard and Poor's, has revealed that the annual reports of Royal Dutch Petroleum Company and Shell Transport and Trading Company, Ltd. do not list Mr. Sandberg as having had any position or connection

with these companies in the years 1952, 1953, 1954 or 1964." (Affidavit of Simon H. Rifkind, October 16, 1964, Deft's App. 451a).

An affidavit from Mr. Sandberg himself, sworn to on October 26, 1964 in Holland, and served on November 4, 1964 stated point-blank:

> "I am not now nor have I ever been a director, officer or member of any corporate committee, or employee of the Royal Dutch Petroleum Company or The Shell Transport and Trading Company or of any of their subsidiaries or affiliates." (Affidavit of Jan A. G. Sandberg, October 26, 1964; Deft's App. 459a).

This is not the only indication that petitioner was totally in error in first making his assertion, and is now acting either in total ignorance or in bad faith in raising the issue once more in his petition. In their brief of November 4, 1964, in opposition to Cities' summary judgment motion, plaintiff's attorneys stated:

> *"We do not understand how we could have been so misinformed about Sandberg's connection with the Royal Dutch Shell Group.* Obviously we cannot be expected to answer on November 4, 1964 an affidavit served on us on November 4, 1964 concerning a gentleman in Amsterdam, but we intend to look into the matter." (Emphasis added) (Plaintiff's Reply to Cities Service's Submission in Support of its Motion for Summary Judgment, November 4, 1964, p. 22; Deft's App. 461a).

The summary judgment motion was not argued until February 9, 1965. Whatever the results of petitioner's research, his counsel never uttered a further word to suggest

that anything Cities or Mr. Sandberg said concerning Mr. Sandberg's non-existent connection with Royal Dutch Shell was incorrect. Petitioner, here, as in every other instance in this case, has utterly failed to sustain his burden of coming forward with specific facts to defeat Cities summary judgment motion. Since the facts as to the identity of the Board of Directors, officers and Finance Committee of Royal Dutch Shell and its subsidiaries are a matter of public record, the facts, if they existed, were available to petitioner.

His failure to supply them, and his abandonment of this point on the final argument below, bars assertion of this alleged fact here.

In fact, there was no connection whatsoever between Sandberg and Royal Dutch Shell and petitioner knows it. This is a perfect example of a spurious and sham issue which petitioner attempted to create below and now tries to revive in his petition.

Petitioner's counsel told Watson of Cities that Sandberg was part of Shell. Unfortunately, Watson accepted petitioner's counsel's word, although counsel was just simply wrong. Then petitioner relies upon what Watson said based upon this misinformation. Petitioner ignores the indisputable record, Sandberg's affidavit, and his own failure to produce any evidence, and re-asserts the whole bogus issue again in his petition.

Finally, petitioner does not mention his own concession; he admits that Cities was not a co-conspirator *in August 1952 when the the Jones-Sandberg conversations took place.*

> "Plaintiff does not claim that Jones was acting on behalf of a conspiracy when he sought the invitation, or when he went to Iran, [August 1952] or when he held his Tehran press conference, [September 1952] or when he wrote the conclusions to

his draft report on October 31, 1952." (Plaintiff's Reply to Cities Service's Submission in Support of its Motion for Summary Judgment, November 4, 1964, p. 12; Deft's App. 460a-461a.)

We submit that in raising the Sandberg issue again here, petitioner has gone beyond the pale of proper advocacy.

b) *No "Rational Inference" of Conspiracy by Cities Can be Drawn on This Record*

The courts below rejected petitioner's request that they draw a "rational inference" that Cities joined with the alleged conspirators when it "turned down this opportunity [to take over the Iranian oil industry] without explanation [to plaintiff.]"

Petitioner repeats his plea here:

> "Cities went three-fourths of the way towards exploiting the opportunity but then, after conferring with several of the co-conspirators, stopped in its tracks. . . . Cities' action, taken in apparent contravention of its immediate self-interest in the premises, paralleled and aided that of the other conspirators, who were engaged in an open campaign to boycott all suppliers of Iranian oil. . . ." (Petition, p. 22.)

At pages 4 through 7 of his petition, petitioner attempts to create a framework to justify the inference he seeks.

These assertions, however, cannot lead to an inference of conspiracy. All of these assertions appear to be no more than a prelude to the now abandoned claim of turnabout. But in the absence of a turnabout, and in the face of the documented record of a single, consistent, undeviating, ad-

mittedly non-conspirator's course of conduct, they are a prelude to nothing.

Thus, when Cities was allegedly at the mercy of the International oil suppliers (Petition, p. 4), petitioner admits Cities was not a conspirator.

When Cities attempted to obtain foreign crude oil for many years (Petition, p. 4), petitioner admits Cities was not a conspirator.

When conferences were held between petitioner's associates and Cities in June, 1952 (Petition, p. 4), petitioner admits Cities was not a conspirator.

When Cities expressed interest in taking over the Iranian oil industry (Petition, p. 4), petitioner admits that Cities was not a conspirator.

When petitioner went to Iran to obtain an invitation that Cities desired and when he delivered the invitation to Cities on July 31, 1952 (Petition, pp. 4-5), petitioner admits that Cities was not a conspirator.

When Watson prepared his memorandum in August, 1952 (Petition, p. 5), petitioner admits Cities was not a conspirator.

When Jones went to Iran, conferred with Sandberg, allegedly a member of the finance committee of a co-conspirator (a wholly false allegation as pointed out above) and sought information on tankers from Watson (Petition, pp. 5-6), petitioner admits Cities was not a conspirator.

When Jones inspected Iranian facilities (Petition, p. 6), petitioner admits Cities was not a conspirator.

When petitioner returned to the United States in September, 1952, and was told what petitioner testified he was told:

> "In view of Mr. Watson's statements and the general situation we realized that the—we felt that the thing was in *abeyance*. Mr Watson said on several occasions they were not interested *now*. Mr. Whetsel kept telling us the situation might open up." [emphasis added]
>
> (Deposition of Gerald B. Waldron, Deft's App. 118a Cf. Petition, p. 7: "A few days later Waldron was informed by Watson that Cities had no interest in Iranian oil.")

petitioner admits Cities was not a conspirator.

When the communications concerning the proposed sale of Iranian aviation gasoline to the United States Air Force took place in September, 1952 (Petition, pp. 6-7), petitioner admits Cities was not a conspirator.

At the end of October, 1952, when Jones wrote his final report and Cities decided not to take over the Iranian oil industry, if it ever had the chance (Petition, p. 6), petitioner admits Cities was not a conspirator.

Indeed, every alleged fact set forth at pages 4 through 7 of the petition took place at a time when petitioner admits Cities was not a conspirator.

Finally, as to the Richfield transaction, discussed at page 7 of petitioner's brief, that unsupported speculation has already been disposed of. (See *supra*, pages 31-38.)

Accordingly it is of no moment whether Cities explained to petitioner why it did not take over the Iranian oil industry. Or whether Cities solicited Iran's invitation. Or what Jones communicated with what motivations concerning the sale of aviation gasoline in September, 1952. Indeed, the same is true concerning Cities' alleged refusal to deal with petitioner in September of 1952. Whatever the motive,

petitioner has conceded that at the time of all of these events, Cities was *not* a conspirator. And the only possible issue in this case is whether any of this conduct was pursuant to the alleged conspiracy. Petitioner has conceded it was not.

These concessions were not casually given. Petitioner conceded:

> "Plaintiff does not claim that Jones was acting on behalf of a conspiracy when he sought the invitation, [July 1952] or when he went to Iran, [August 1952] or when he held his Tehran press conference, [September 1952] or when he wrote the conclusions to his draft report on October 31, 1952." (Plaintiff's Reply to Cities Service's Submission in Support of its motion for Summary Judgment, November 4, 1964, p. 12; Deft's App. 460a-461a.)

And further, plaintiff boldly asserted:

> *"It does not happen to be the fact, however, that Cities lost interest in Iranian oil.* Contrary to what plaintiff was told, Jones (President of Cities) continued to take a 'keen interest' in Iranian oil, as Watson, himself, admitted; a special 'Iranian room' was set up at Cities' New York office and put in charge of a young Iranian woman who looked after the files and, in fact, Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies (Pltf's Ex. CS-40)." (Affidavit of Samuel M. Lane, September 15, 1964; Pltf's App. 146a).

These admissions were compelled by the documentary record which plaintiff, in his petition, blithely disregards.

On this record, petitioner's argument that

> "Cities, although anxious at first to accept the deal offered it by him, made a sudden turnabout after conferring with several of the other alleged conspirators, and thereafter, in contravention of its own interests in the matter, and in obedience to the announced conspiratorial purpose, not only turned plaintiff down but used its influence to frustrate plaintiff's attempt to dispose of some of his oil to the United States government" (Petition, p. 31)

creates no triable issue, for petitioner has conceded that Cities did *not* lose interest in Iranian oil. He abandoned below his contention that Cities made any turnabout at all. The Sandberg conference referred to has been shown above (pp. 43-48) to be wholly false. Finally, petitioner has conceded that when Watson conferred with Sandberg, when Cities turned down his proposal, and when Cities allegedly tried to stop his attempted sale of Iranian aviation gasoline to the United States Government in September of 1952—that at all these times Cities was not a conspirator.

In fact, plaintiff concedes that as late as 1955 Cities "watched with resentment" while the alleged conspirators carved up the "Iranian pie," excluding Cities Service therefrom.

The documented record and petitioner's concessions which were compelled thereby establish that Cities pursued a single, unified, anti-conspiratorial, anti-monopoly course of conduct from 1952 to 1955. On this record, summary judgment was clearly proper.

c) *What is Left of Petitioner's Case?*

Petitioner's case against Cities really boils down to a question. Petitioner asked below: "Why, after going so far [had] Cities turned aside?"

Petitioner repeats his query here:

> "Cities went three-fourths of the way to exploiting the opportunity but then . . . stopped in its tracks . . . in apparent contravention of its immediate self-interest. . . ." (Petition, p. 22.)

The history of this litigation has moved from the plaintiff's *allegations* in his complaints, to plaintiff's admission on his deposition that his case was based on two *conjectures*, to the present stage, where all his conjectures have been totally destroyed, and the plaintiff is driven to state his case in the form of a series of *speculative inquiries*. In short, after 9½ years nothing remains of plaintiff's case against Cities except an inquiry: Why did Cities Service fail to take over the Iranian Oil Industry?

But even the answer to this speculative inquiry is found in the documented record. On October 31, 1952, Mr. Jones completed a proposed report to Premier Mossadegh outlining the problems and the proposed solutions relating to reactivating the Iranian oil industry.

Assuming, although it has not been proved, that Cities had the opportunity to take over the entire Iranian oil industry, as petitioner asserts, the reasons why it did not do so are clearly set forth—in a contemporaneous document, whose authenticity is unchallenged, prepared at a time when plaintiff *admits* Cities was not a conspirator.

That document states *inter alia:*

> "MAINTENANCE AND REPAIR MATERIAL
>
> * * * *
>
> The problem of securing replacement and repair parts for this British-manufactured equipment from other than the British manufacturer is almost impossible of solution. An investigation has been made

as to the possibilities of obtaining spare parts for the British-manufactured equipment from American manufacturers. The specific parts investigated were those included in lists obtained from Abadan during the visit to Iran. This study has shown conclusively that in the great majority of cases it would be practically impossible for American manufacturers to supply such equipment due to lack of detailed fabrication drawings, as well as to the fact that the fabricating of small quantities of special orders becomes prohibitively expensive."

(Report on Iranian Petroleum Situation, October 31, 1952, p. 7; Deft's App. 6a-7a).

"It is extremely doubtful if the Abadan refinery could operate at maximum capacity, or even close thereto, for more than a very few months unless a workable mechanism is devised for the securing of repair and replacement parts for the British-manufactured refinery equipment."

(*Id.* p. 8; Deft's App. 8a).

"*Automotive Facilities*

The problem of maintaining adequate automotive transportation facilities is one of the most serious problems facing the National Iranian Oil Company at present. This is true, first, because all petroleum operations are dependent upon automotive facilities for the movement of men and materials, and secondly, even with the limited scale of today's operations, the automotive transportation facilities are being operated almost at their original capacity since the number of employees of N.I.O.C. is but little changed from what it was prior to nationalization. Since early in 1951 no

new automotive equipment has been obtained by the N.I.O.C. and only a very limited amount of repair parts for the existing equipment. It was quite apparent from an observation of the various types of automotive equipment now in use that unless extensive replacements are soon secured there will be a serious collapse in the automotive transportation system." (*Id.* p. 17; R. 12200; Deft's App. 17a).

* * *

"There are three major considerations to be resolved if the petroleum industry in Iran is to be reactivated:

First, obtaining sufficient tankers, markets and marketing facilities to secure outlets for Iranian petroleum products and crude oil.

Second, obtaining necessary skilled petroleum technologists and operators to supplement the present Iranian staff for the operation of the petroleum facilities.

Third, obtaining the necessary replacement and repair material to permit the operation of the existing petroleum equipment, a large proportion of which is of British manufacture.

It is proposed to discuss the first consideration in some detail in this summary section since it is the most difficult of solution." (*Id.* p. 25; Deft's App. 25a).

* * *

"The possibility of exporting any substantial quantity of petroleum products from Iran to the Western Hemisphere in the foreseeable future would appear to be almost negligible. This is particularly true because the Abadan refinery in contradistinction to Iranian oil production is not a low-cost producer.

The labor costs at the Abadan refinery, despite comparatively low wage rates, are from five to seven times greater than for comparable U. S. refineries, and the yield of high value products, such as gasoline, is much lower than invariably obtained by U. S. refineries. It would seem to be completely unrealistic to assume that any reactivation of the Iranian refining industry could be achieved in the foreseeable future through the exportation of refined products from Abadan to the Western Hemisphere." (*Id.* at p. 28; Deft's App. 28a.)

"A correlary part of securing outlets for Iranian petroleum is the problem of securing sufficient tankers for the movement of this oil. It is estimated that to move as much oil from Iran as was moved in 1950 to Eastern Hemisphere markets would require about 400 tankers, aggregating about 5,000,000 deadweight tons. Table II in the appendix shows the latest available listing of the worldwide tankage fleet by countries and by tonnage. As of the present time practically all these tankers are in operation and it is probable that this tight tanker situation will continue for the next two years. While it is true that a certain number of tankers can almost always be obtained on a charter basis, it is highly improbable that anything like 5,000,000 tons of tanker capacity could be obtained to move Iranian petroleum without drawing on at least part of the fleet which, prior to nationalization, moved Iranian oil into world markets [the Anglo-Iranian fleet]. The construction of a new fleet of tankers for this purpose is possible, but it would be exceedingly expensive (possibly $800,000,000) and would require as much as five years to complete.

"Summarizing, the follwing reflects the views of Mr. Jones and his associates on this phase of the report:

1. Complete reactivation of the Iranian petroleum industry in any reasonably short time will require that some arrangements be consummated through which a substantial portion of the marketing and transportation facilties utilized for Iranian oil prior to nationalization [both British] will be restored to this service.

2. There will be little, if any, demand in the Western Hemisphere for refined products from Abadan.

3. For the immediate foreseeable future, Abadan refinery operations cannot be increased beyond the amount needed to take care of internal Iranian demands and such markets as can be developed in Europe, Asia and Africa." (*Id.* at pp. 29-30; Deft's App. 29a-30a.)

* * *

"This fact must be recognized by all parties concerned; that the full reactivation of the Iranian oil industry within a period of five years or less can only be obtained by the consummation of some agreement between the Iranians and the British whereby the markets and the transportation and marketing facilities previously being served by and handling Iranian petroleum are returned to that service. Therefore, the development of a mutually satisfactory agreement between the Iranians and the British is the fundamental point governing the full reactivation of the oil industry of Iran." (*Id.* at p. 35; Deft's App. 35a-36a).

It is conceded that the idea of such an agreement would not then even be entertained by the Iranians.

If petitioner were not so obsessed with his search for the slightest evidence of evil-doing by Cities, he would accept this admittedly non-conspiratorial summary for what it

was—an honest answer to his persistent question "Why, oh why, didn't Cities do it?"

Petitioner has thus not produced any specific facts showing that there is a genuine issue for trial. Instead, he has relied upon a speculative inquiry, in the absence of any evidence substantiating any of his previously demolished guesses. He asks "did Cities conspire"?—the ultimate conclusory question—in the face of an undisputed record which compels the conclusion that Cities never engaged in the conspiracy petitioner alleges.

In any event, merely raising questions as to legal conclusions is totally insufficient to defeat a motion for summary judgment. There can be no doubt concerning the meaning of Rule 56(e) which states:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegation or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate shall be entered against him."

POINT II

Petitioner may not now raise for the first time the argument that the lower courts somehow shifted to petitioner the burden of demonstrating the existence of a genuine issue of fact.

Petitioner's main argument here is that both the District Court and the Court of Appeals misapplied the summary judgment procedures under Rule 56 of the Federal Rules of Civil Procedure by "relieving the defendant of the burden of demonstrating the absence of a genuine issue of fact on its motion for summary judgment, and imposing the converse burden on plaintiff." (Point I, Petition, p. 13.)

This argument suffers from two defects. First, petitioner has never raised this argument in the 9½ years during which this litigation has been pending, and inserts it in his petition here as an afterthought. Second, as we have urged above (pp. 3-8 and Point I), even if properly before this Court, petitioner's argument is totally without merit and ignores both the opinions and the voluminous record below.

It is well settled that this Court will not consider points raised in petitions for certiorari which have not been raised before or considered by the court below:

> "Rule 23(1)(c) [of the Supreme Court Rules] states that the Court limits the petitioner to the points raised in his petition. These points must, of course, properly arise in the record and *must have been urged and briefed below*" (Citations omitted). Stern & Gressman, Supreme Court Practice, p. 248 (3d Ed., 1962).

For example, in *Lawn* v. *United States,* 355 U. S. 339, 362 n. 16 (1958), when petitioners contended that the trial

court had erred in refusing a motion for production of certain documents, this Court concluded:

> "This issue was not raised in the Court of Appeals. Only in exceptional cases will this Court review questions not raised in the court below. *Duignan* v. *United States,* 274 U. S. 195, 200; *Husty* v. *United States,* 282 U. S. 694, 701, 702. There are no exceptional circumstances here."

See also *California* v. *Taylor,* 353 U. S. 553, 557, n. 2 (1957).

Plaintiff's did not raise the "shifting of burden" issue in the Court of Appeals. This is clearly indicated by merely listing the three points contained in his brief before the Second Circuit: Point I—"Appellant Has Set Forth Specific Facts Showing Genuine Issues of Material Facts"; Point II—"Rule 56(e) and Recent Cases Decided Thereunder Do Not Authorize Summary Judgment in this Action"; Point III—"Further Discovery Under Rule 56(f) Should Be Granted".

None of the briefs filed by the petitioner at any time below raised the argument that Cities had been relieved of demonstrating that there was no genuine issue of fact when it moved for summary judgment.

It is apparent that neither the District Court nor the Court of Appeals could have decided, nor did decide, that Cities did not have to show that there were no genuine issues for trial on its summary judgment motion. Indeed, the courts below had no occasion to address themselves to or pass upon this issue because it was never presented by plaintiff.

We submit that plaintiff's claim that the Court of Appeals ruled on this point is erroneous, that plaintiff did

not raise this argument at any time below, and that he should not be permitted to assert it for the first time in his petition here.

POINT III

The District Court did not abuse its discretion and the Court of Appeals was correct in affirming the denial of further discovery to petitioner.

In light of the indisputable record, the suggestions that discovery of Cities was too restricted (Petition, pp. 9-12, 19-21), and that discovery of other defendants was improperly denied (*id.*, p. 21) are out of place.

Plaintiff examined every surviving Cities Service employee who had anything to do with him, or Iran, or Kuwait, or Consortium, or "change of position" or Richfield. In view of the breadth of these depositions and plaintiff's utter failure to produce any facts supporting his case after 9½ years, his makeweight arguments as to the scope of discovery appear cavilling, and they were all properly rejected below.

Plaintiff contended below that without any specific claim or facts to support his claim "plaintiff has a right to determine whether Cities Service did conspire". (Pltf's Memorandum of Law in Support of Plaintiff's Motion for Further Discovery, November 4, 1964, p. 20.) His argument here as to additional Rule 56(f) discovery of Cities and other defendants, is based upon the theory that he is entitled to such discovery as a matter of right.

But, it is clear that further discovery was a question of discretion under Rule 56(f). And plaintiff makes no effort to show that Judge Herlands' denial of further discovery was an abuse of discretion.

Rule 56(f) provides:

> "Should it appear from the affidavits of a party opposing the motion [for summary judgment] that he cannot for reasons stated present by affidavits facts essential to justify his opposition, the court *may* refuse the application for judgment or *may* order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or *may* make such other order as is just." (Emphasis supplied)

The law is clear that when the record presented warrants summary judgment, and no specific facts have been produced by the opposing party, it is within the discretion of the trial judge under Rule 56(f) to grant summary judgment, or to adjourn the motion pending further discovery. 3 Barron & Holtzoff, Federal Practice and Procedure, § 1238, p. 174 states:

> "To obtain relief under this provision, however, the opposing party must show good reasons why he cannot present facts essential to justify his opposition."

Professor Moore, summarizing the case law, states:

> "Exercising a sound discretion [under Rule 56(f)] the trial court then determines whether the stated reasons are adequate. And, absent abuse of discretion, the trial court's determination will not be interfered with by the appellate court." 6 *Moore's Federal Practice* ¶¶56.24, 56.15 [6] pp. 2873-2874; 2429 (2d ed. 1965); See also, *e. g., Bond Distributing Co.* v. *Carling Brewing Co.*, 32 F. R. D. 409, 414-415 (D. Md. 1963), *aff'd* 325 F. 2d 158, 159 (4th Cir.).

Plaintiff cannot maintain that Judge Herlands abused his discretion in denying further discovery to the plaintiff,

when, after 5 years of discovery, plaintiff did not produce a single specific fact to indicate a genuine issue for trial.

As pointed out above (pp. 19-21, 26-28, 32), Judge Herlands gave plaintiff opportunity after opportunity to discover specific facts or evidentiary data which would enable him to defeat summary judgment. Judge Herlands' patience and fairness in this regard are thoroughly documented in the record.

As pointed out above (pp. 21, 28-30) after pursuing Cities' officials through 1200 pages of transcript, and inspecting over 220 Cities' documents, plaintiff was still unable to present any specific facts bearing on his speculations concerning Cities.

As pointed out above (pp. 21-22, 25-26, 30-34), plaintiff abandoned his contentions one by one and admitted that Cities never lost interest in Iranian oil and that Cities fought the proposed consortium on the ground that it fostered monopoly.

And, there is nothing left of plaintiff's case as to which further discovery of Cities or of the other defendants could be relevant. Plaintiff now asks only: Did Cities conspire?—a conclusory question that is not a specific fact or evidentiary datum, nor even a claim.

The history of this litigation reveals that plaintiff's discovery has not narrowed the issues at all. For the *more* discovery and examination of witnesses plaintiff conducts, the *less* specific his claim against Cities becomes.

His most specific allegations are in his complaint, that the Kuwait oil contract was a bribe and the Consortium opportunity was a reward. They have evaporated as plaintiff examined Cities officials and documents.

The vaguer claim that followed—that Cities unexplainedly lost interest in Iranian oil—led to extensive exam-

ination and production of documents only to have plaintiff recant and admit that his basic premise was unfounded, and that no change of position occurred.

Finally, after examination of the appropriate Cities officials on every matter relevant to the claims plaintiff asserted, without producing an iota of evidence to support his speculations, plaintiff has retreated to the point where he has no contention remaining,—he now only asks the most conclusory question of all—did Cities conspire?

It is axiomatic that a deposition must be directly or indirectly germane to some issue of fact. Even under the broad Federal Rules, which permit examinations in order to find evidence, there must be some issue of fact as to which the evidence sought has a relationship.

In the case at bar, there is simply no issue of fact as to which an examination of other defendants could conceivably be pertinent.

Kuwait was alleged and abandoned.

Consortium was alleged and abandoned.

Turnabout was alleged and abandoned.

Sandberg was alleged and demolished.

Richfield Oil was alleged and must be abandoned in the face of the documented record.

And the speculative inquiry, "Why did Cities fail to take over the Iranian oil industry?" is not an issue of fact; it is a question. And the record supplies the answer to that question.

Finally, the remaining conclusory question, "Did Cities Service conspire?" is again not an issue of fact but a question as to an ultimate conclusion. And the answer to the

question supplied by the documentary record is a clear and indisputable "No."

Plaintiff has thoroughly examined Cities. He has not produced any specific facts, necessary under Rule 56(e). His case against Cities is destroyed by his own concessions and abandoned allegations, and by undisputed documents.

On the face of this record, Judge Herlands' denial of plaintiff's Rule 56(f) motion was clearly correct.

In affirming, the Court of Appeals recounted the extensive discovery which plaintiff had conducted of Cities and concluded:

> "Despite these more than ample opportunities to develop a basis for his action, plaintiff has been unable to do so, and has failed to demonstrate the existence of any genuine issue of fact. The court quite properly denied the Rule 56(f) motion for further discovery by which plaintiff sought to engage in still another 'fishing expedition' in the hope that he could come up with some tenable cause of action.
>
> "We are not unmindful that private anti-trust suits to some extent cast the plaintiff in the role of a 'private attorney general' and that such suits are favored, see e.g., *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322, 329 (1955); cf., *J. I. Case Co.* v. *Borak*, 377 U. S. 426, 432-433 (1964). Even so, it is apparent in this case that Waldron was given ample opportunity and scope in his shifting programs of discovery. The plaintiff, as a 'private attorney general,' may not seek indefinitely, within the period of limitations, to use the process to find evidence in support of a mere 'hunch' or 'suspicion' of a cause of action." (Petition, p. 39; 361 F. 2d at 673).

We submit that the Court of Appeals properly found that plaintiff had ample opportunity for discovery and that there was no abuse of discretion by the district court.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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JAN 10 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~744~~ 23

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

against

CITIES SERVICE CO.,

Respondent.

PETITIONER'S REPLY BRIEF.

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IN THE

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OCTOBER TERM, 1966

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PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

against

CITIES SERVICE CO.,

Respondent.

PETITIONER'S REPLY BRIEF.

I.

Reply to Respondents Points I and III.

Respondent's brief is more significant for what it omits than for what it contains.

(1) Respondent does not point to a single pleading or affidavit denying that respondent conspired with the other defendants to refuse to buy petitioner's oil. (Petition, Part I).

Although the petition fairly challenged it to do so, respondent does not even now represent that, if the case proceeds to answer and trial, respondent will deny that it conspired with other defendants. Respondent has avoided the conspiracy issue throughout ten years of litigation by refraining from serving any answer and by failing to submit any affidavit by an officer or employee speaking with personal knowledge of the facts. Instead, respondent has

trained its guns on two or three collateral issues in the pretense that petitioner's case stands or falls with those issues. In fact those issues, Kuwait, Consortium and Richfield (we shall show that "turnabout" as expounded by respondent's counsel was never an issue) can have no bearing on the outcome of the instant petition, for petitioner makes his case without any reliance on Kuwait, Consortium or Richfield. See Petition, Point III. The Kuwait and Consortium allegations need not have been pleaded in the first place, being only items of evidence. When the complaint was amended, they were omitted. (Plaintiff-Appellant's Appendix, pp. 73a-82a).

In the same vein respondent argues that it is entitled to summary judgment because of petitioner's "admissions" and "concessions" about times and events of the conspiracy. Behind respondent's barrage of words lies one thought: that petitioner must lose because he does not know the minutiae of the conspiracy (when it started, when it ended, who was to get what). Merely to state the proposition is to refute it. If plaintiffs in civil anti-trust actions were to be held to such standard of proof on the issue of conspiracy, they could never prevail and the legislative policy favoring the private policing of the antitrust laws would be frustrated. The law is otherwise. Far from imposing strict standards of proof of the element of intent to conspire in civil antitrust litigation, the law is liberal in accepting circumstantial evidence, in recognition of the fact that the proof of conspiracy is invariably in defendants' power. The authorities are cited and discussed in the petition (pp. 22-34). Certainly, in the instant case, petitioner's inability to answer all of the whys and wherefores of the conspiracy is insignificant when compared with respondent's failure to deny the conspiracy at all, let alone to produce someone with personal knowledge of the facts. That failure was not compensated for by respondent's submission of documents and affidavits (Brief In Opp. p. 5) which relate only to Kuwait and to respondent's participation in the events leading to the Consortium.

While Waldron did not know the inner workings of the conspiracy, he did know that respondent at first went along with him, as its self-interest dictated, and only changed its course after conferring with two other defendants, and that respondent thereupon not only cancelled its own deal with him, but also intervened to kill another deal he had going, after which respondent was again admonished by the other defendants to hew to their line. (Pet. pp. 4-7; 11; 22-23; Pltf's. App. 153a). These facts, without more, entitle petitioner, first, to defeat the motion for summary judgment, second, to engage in full discovery, and third, (but not determinative of this petition) to go to the jury on the issue of conspiracy even if no other evidence bearing on that issue is eventually discovered. But respondent would rather talk about Kuwait, Consortium and "turnabout".

Respondent endeavors to persuade the Court that petitioner has crossed the same street twice, thereby making two complete turnabouts. According to respondent, petitioner asserted, first, that respondent was interested in Iranian oil, then that respondent lost interest in Iranian oil, and, finally, that respondent never lost interest in Iranian oil. This misconstrues petitioner's position. Petitioner's contention is that respondent was interested in Iranian oil, that respondent gave up its chance to pursue that interest through the exploitation of petitioner's contract and contact with the Iranians, but that respondent never lost interest in Iranian oil. The only relevant issue is this: was respondent motivated by the conspiratorial purpose (to boycott the Iranian government and its contractors, among them Waldron, in order to enable defendants to move in) when respondent refused to deal with Waldron? Petitioner's answer is "yes", and he bases his answer on the circumstantial evidence discussed in the petition, not on Kuwait, Consortium or any loss of interest in Iranian oil on the part of respondent.

Although respondent does not come right out and say so, respondent seems to argue that it has obviated any need for denial of the conspiracy by furnishing what it considers

to be proof of a non-conspiratorial motive for its actions. (Brief In Opp. pp. 53-58). It may be that an antitrust defendant can, in a proper case, negate the conspiracy by convincing proof of a non-conspiratorial motive for its conduct, without denying the conspiracy in so many words, although its failure to do the latter will always be suspect. But if it wants to proceed in that manner, its proof, we respectfully submit, must be by affidavit by its officers or employees with knowledge, and supported by the entire record. Respondent has never furnished such affidavits and support. Such "proof" as there is in the record of a non-conspiratorial purpose for respondent's jilting of Waldron consists of counsel's testimony and of his argument on the basis of selected passages from selected documents from respondent's and the government's files (Br. In Opp. pp. 53-58). And who but respondent itself selected those documents! (Pet. p. 11). Petitioner draws an opposite inference from the same documents. (Pet. pp. 5, 6, 11). If respondent has accomplished anything by submitting those documents, it has created a case for the jury (to say nothing of a case for further documentary discovery).

(2) Respondent does not refute petitioner's contention that such limited discovery as petitioner has had was, in the first instance (Hill), ineffectual and, in the second instance (Watson, Frame and Heston), too restricted to allow petitioner to lay bare respondent's motivation for dealing with petitioner as it did. (Petition, Part II.)

Respondent flatly asserts, without supporting references, that petitioner has examined "every surviving Cities Service employee who had anything to do with him, Iran" or the collateral issues of Kuwait, Consortium or Richfield (Brief In Opp. p. 61). Respondent is silent as to Carter, who for twenty years had been an employee of respondent; who served respondent as a broker at the salient times; who attended the crucial conferences and accompanied respondent's party on the Iranian trip; but whom petitioner has not yet been allowed to examine. (Plaintiff-Appellant's

App. pp. 158a, 159a). Respondent is silent as to petitioner's claim that he should be allowed to examine the other defendants before his case against respondent is put to the test. (Pet. p. 21). Respondent fails to answer petitioner's contention that the unprecedented restrictive attitude taken by the trial judge is such a dangerous departure from the accepted and usual course of judicial proceedings in civil antitrust actions as to call for the exercise of this Court's power of supervision (Pet. pp. 12; 19-21). Respondent does not try to justify the standards applied by the judge when he "looked through the telescope at the other end" (Pet. p. 10) and inexplicably refused broad discovery to petitioner *because* petitioner needed broad discovery ("Because plaintiff's claim . . . is, judged by the entire available record so insubstantial, the plaintiff will not be given carte blanche authority to conduct untrammeled pretrial proceedings . . . the usual federal rule permitting fishing expeditions will be curtailed . . . ." (Pet. p. 49)). Respondent would rather talk about Kuwait, Consortium, "turnabout" and Richfield (Brief In Opp. pp. 63-64), issues that are not before this Court.

(3) Respondent does not take issue with a single one of the facts (except Sandberg) on which petitioner relies as circumstantial evidence which entitles petitioner to a trial of the issues of conspiracy under decisions of this Court and lower federal courts. (Pet. Part III.)

As for Sandberg, we would point out to the Court (1) that respondent's own Chief Executive Officer, Watson, admitted that Sandberg was a member of the Finance Committee of Royal Dutch Shell (Deft.-Resp.'s App. p. 425a); (2) that Watson never retracted his statement, neither during his deposition nor by affidavit on respondent's motion; and (3) that the asserted exchange between Beshar and Watson is denied by petitioner's counsel as earnestly as it is asserted by respondent's counsel (Brief In Opp. pp. 44-45). At most, then, respondent has raised an issue for the trier of the facts as to Sandberg's function.

II.

Reply to Respondent's Point II.

There is left for consideration only respondent's contentions that the lower courts did not impose the burden of proof on petitioner instead of respondent, as petitioner says they did, and that, in any event, petitioner did not argue that respondent had the burden. (Brief In Opp. pp. 5-7, 59-61). Those contentions are refuted both by what the courts did and by what they said.

Judge Herlands could not have been more explicit on the question of the burden of proof when, in 1961, he said:

> "For the guidance of counsel, the court observes, on the basis of the present record:
>
> 1. It is doubtful in the extreme *whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.****." Opinion dated March 30, 1961; Petitioner's App. p. 70a, 71a. (Emphasis supplied.)

That the judge did not change his approach is clear from his final opinion:

> "The single issue before the court relating to Cities' motion for summary judgment is whether plaintiff's discovery has unearthed a 'genuine issue [of fact] for trial' where nothing had existed before, but 'suspicion' and 'gossamer inferences drawn from the mere sequence of events.' " Opinion dated September 8, 1965; Pet. p. 44. (Emphasis supplied).

The judge's two pronouncements leave no doubt that he thought plaintiff had the burden of demonstrating the existence of fact issues. His ruling in that respect conflicts squarely with the authorities cited by petitioner in Point I of his Petition (at pp. 13-19). The Court of Appeals repeated the error:

> "Despite these more than ample opportunities to develop a basis for his action, plaintiff has been

> unable to do so, *and has failed to demonstrate the existence of any genuine issue of fact.*" Pet. p. 39. (Emphasis supplied).

The lower courts' treatment of the motion shows that they practiced what they preached. Nowhere in Judge Herland's opinion did he consider the weight of the evidence produced by defendant, as he was required to do before turning to petitioner's case. From one end to the other, his opinion was a dissection of petitioner's case. Most importantly, the judge made no mention of the absence of any denial by respondent of the conspiracy, an omission which, in and of itself, is enough to defeat the motion. (*Cf. Interstate Circuit, Inc.* v. *United States,* 306 U. S. 208 (1939); *William Goldman's Theatres* v. *Loew's, Inc.,* 150 F. 2d 738 (3rd Cir. 1945), *cert. den.* 334 U. S. 811 (1948); other cases are cited in the Petition, at pp. 13-14). The Circuit Court adopted Judge Herland's reasoning (Pet. pp. 37-39).

Respondent is mistaken when it says petitioner did not take the position below that respondent had the burden of demonstrating the absence of any genuine fact issue (Brief In Opp. pp. 59-61). In petitioner's very first brief in opposition to respondent's summary judgment motion, submitted on May 6, 1960, petitioner argued that respondent had not sustained the burden of negating the conspiracy. Point II of that brief was entitled:

> "The Motion Is Defective".

And the first subheading was entitled:

> "(a) The documentary evidence [submitted by respondent] does not negate plaintiff's claim that Cities was bought off by Gulf and Anglo-Iranian."

In that very brief (at p. 37), petitioner relied on *United States* v. *General Railway Signal Co.,* 110 F. Supp. 422 (W. D. N. Y. 1952), cited in the petition (at p. 14), among others, in support of his contention that the case was not

a proper one for summary judgment. In that case, the court held:

> "Movant has the burden of demonstrating clearly that there is no genuine issue of a material fact to be determined. Hoffman v. Partridge, 84 U. S. App. D. C. 224, 172 F. 2d 275." 110 F. Supp. at 425.

Petitioner preserved his position throughout. In his memorandum in opposition to respondent's application for summary judgment, filed on August 16, 1963, after reviewing the facts over 41 pages, petitioner put the issue (at pp. 41-42) as follows:

> "Can one really say with any conviction that Cities Service has demonstrated the absence of any dispute as to the material issue of whether Cities Service conspired to boycott plaintiff?"

In his brief in the Court of Appeals (Point I, pp. 40-42), petitioner cited and discussed *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U. S. 464 (1962), where this Court discussed the standards to be applied on a Rule 56 motion. This Court held that the record must be viewed in the light most favorable to the party opposing the motion (368 U. S. at 473) and reversed a summary judgment for defendant on the very ground urged by petitioner herein: that defendant's affidavits failed to negative the conspiracy. (See, for example, 368 U. S. at 470). Later in the same brief (Point II, pp. 43-46), petitioner discussed and distinguished *Scolnick* v. *Lefkowitz*, 329 F. 2d 716 (2d Cir. 1964), in which the court imposed on defendants the very burden which, petitioner contends, should have been imposed upon respondent here as a *sine qua non* for the granting of the motion: the submission of detailed factual affidavits denying the conspiracy. In *Scolnick*, the defendants did sustain that burden, and, as plaintiff was unable to present countervailing evidence, the court granted defendants' motion for summary judgment, saying:

> "Defendants' detailed affidavits, categorically denying the existence of such a conspiracy—and, in the

case of defendant Lefkowitz, denying knowledge of the plaintiffs' very existence—were sufficient to require the plaintiffs to 'set forth specific facts showing that there is a genuine issue for trial' under the recent amendments to Rule 56(e); this they failed to do." 329 F. 2d at 717.

In the instant case, just the opposite situation was presented. Respondent did not deny the conspiracy and, therefore, the burden was never shifted to petitioner (Pet. Point I). Moreover, petitioner did set forth specific facts by the way of circumstantial evidence to show that there is a genuine fact issue as to respondent's participation in the conspiracy. Hence petitioner would have sustained the burden if it had been shifted to him (Pet. Point III).

Conclusion.

The Petition should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~711~~ 23

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

—against—

CITIES SERVICE CO.,

Respondent.

RESPONDENT'S REPLY BRIEF

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Respondent has denied every allegation of wrongdoing made by Petitioner at any time..... 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 744

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

—against—

CITIES SERVICE CO.,

Respondent.

RESPONDENT'S REPLY BRIEF

Respondent has denied every allegation of wrongdoing made by Petitioner at any time.

Petitioner's reply brief is so misleading that a brief response is required.

Petitioner claims that Cities Service never denied participation in the alleged conspiracy and that this must lead to reversal of summary judgment. (Pet. Reply Br. pp. 1-4). As we noted in our brief in opposition, this statement ignores the entire record in this case (Brief in Opp. p. 6). Cities has denied every allegation that petitioner has made charging Cities with wrongdoing.

Thus, in his complaint of June 11, 1956, petitioner alleged that co-defendants:

> "Gulf and Anglo-Iranian, during late August or early September, 1952, conspired to and did offer Cities

> Service and Cities Service did accept a vast long term supply of Kuwait oil at a price far below the posted International Gulf of Persia price . . . . *At this time and by these acts Cities Service,* without knowledge of plaintiff, *entered into combination and conspiracy with the other defendants* and in furtherance of defendants' scheme broke off further negotiations with plaintiff and the National Iranian Oil Company and refused to enter into any contract or arrangement with reference to Iranian petroleum. As a further consequence of this conspiracy Cities Service eventually gained a participation in the Consortium Agreements relating to Iranian oil hereinafter described." (Complaint, June 11, 1956, ¶10(i)(6), Deft's App. 59a-61a) (emphasis added).

In its summary judgment papers, Cities Service not only denied these allegations but *proved* they were false by an overwhelming preponderance of evidence (Affidavit of George H. Hill, Jr. April 8, 1960, and Exhibits 2-59 in support of Cities' motion for summary judgment April 8, 1960, Deft's App. 146a-370a; see also Brief in Opp., pp. 16-19).

It is true that no *formal* answer was filed, formally denying these allegations. The reason was that defendants sought and were granted an extension of time within which to answer or make motions directed to the complaint by Judge Weinfeld of the United States District Court for the Southern District of New York. The order was entered on July 10, 1956, and the time of defendants Cities Service, Socony, Standard Oil (New Jersey) and Texaco to answer or move with respect to the complaint was extended until thirty days after plaintiff's deposition was completed.

After Cities had completed its 3½ day examination of plaintiff, and while the time was thus extended, it moved for summary judgment.

Since plaintiff had stated in his complaint and deposition that Kuwait and Consortium were the acts by which Cities joined the conspiracy, Cities' summary judgment motion addressed itself to the assertions plaintiff made. It so demolished them that plaintiff never again raised these assertions, and Judge Herlands found that "The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference . . ." (Opinion, March 30, 1961, Pltf's App. 71a). In fact, petitioner was later forced to amend his complaint and abandon his allegations concerning both Kuwait and the Consortium.

Petitioner filed an amended complaint on June 28, 1963, at a time when Cities' summary judgment directed to his initial complaint was *sub judice*.

The reason why Cities never answered the allegations of the amended complaint so as to deny the allegations of "conspiracy" was that petitioner *stipulated* in writing on July 29, 1963 that Cities need not answer until thirty days after the determination of Cities' summary judgment motion. Since Cities' motion was granted, Cities was never required to answer the amended complaint.

Accordingly, petitioner's argument in his reply brief that Cities never submitted a pleading denying the conspiracy allegations is meaningless. Yet, petitioner asserts that the absence of an answer by Cities denying the allegations in the amended complaint must result in a reversal of Cities' summary judgment!

The contention is unworthy of serious consideration. Summary judgment is a remedy designed to deal with facts, not the state of the pleadings. The documented undisputed facts require summary judgment.

CONCLUSION

The petition should be denied.

Dated: New York, New York
January 11, 1967

Respectfully submitted,

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No. 23

PATRICIA WALDRON, as Executrix of the Last Will and Testament of GERALD B. WALDRON, Deceased,
Petitioner,

v.

CITIES SERVICE CO.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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ABBREVIATIONS

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R. Record page of filed but unprinted record

IN THE

Supreme Court of the United States

October Term, 1967

No. 23

PATRICIA WALDRON, as Executrix of the Last Will and Testament of GERALD B. WALDRON, Deceased,
Petitioner,

v.

CITIES SERVICE CO.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE PETITIONER

Opinions Below

The opinion of the court of appeals (Tr. Vol. III, 173-176) is reported at 361 F.2d 671. The opinion of the district court of September 8, 1965 (Tr. Vol. I, 5-17a) is reported at 38 F.R.D. 170; the opinion of June 23, 1964 (*id.* at 21-68a), is reported at 231 F.Supp. 74; the opinion of March 30, 1961 (*id.* at 70-72a), is unreported.

Jurisdiction

The judgment of the court of appeals was entered on June 6, 1966 (Tr. Vol. III, 177). On August 29, 1966, by order of Mr. Justice Harlan, the time within which to file a petition for a writ of certiorari was extended to November 3, 1966 (*id.* at 178). The petition was filed November 3, 1966, and was granted January 16, 1967 (*id.* at 179). The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

Questions Presented

1. In a private antitrust action may plaintiff be stayed from all discovery while he and each of his associates are exhaustively examined by the defendants, one after the other, and the court then accord him only a limited discovery of the moving defendant in aid of his opposition to the latter's motion for summary judgment?

2. In such an action, where the only source of direct evidence of the conspiracy rests in defendants' files, when one of the defendants moves for summary judgment under rule 56(b), Fed. R. Civ. P., is the burden upon the defendant to show that there is no genuine issue as to any material fact for trial under rule 56(c) or is the burden upon the plaintiff to show that there is such an issue under rule 56(e)?

3. Did plaintiff, in fact, sustain the burden of showing genuine issues for trial on the limited record at his disposal?

Statute Involved

The statutory provision involved is rule 56 of the Federal Rules of Civil Procedure, 28 U.S.C. App. following §2718. Rule 56 is printed in Appendix A, *infra*, pp. 66-68.

Statement of the Case

Preliminary Statement

This is an antitrust action brought pursuant to section 4 of the Clayton Act, 15 U.S.C. §15, to recover $109,260,000 as treble damages sustained by plaintiff* as the result of his inability to market oil under a contract which he had secured from the Iranian Government in 1952. Plaintiff claims damages because defendants' conspiracy to boycott all dealings in Iranian oil following nationalization of Iran's oil industry in 1951 prevented him from selling any oil under his contract.

The present appeal is to review the entry of summary judgment in favor of one defendant, Cities Service Co. The defendants named in the original complaint, filed June 11, 1956, are six major international oil companies: British Petroleum Co., Ltd. (formerly Anglo-Iranian Oil Company, which held the concession for Iranian oil prior to nationalization), Socony Mobil Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), Texaco Inc., Gulf Oil Corp. (each of which also held substantial oil concessions in the Middle East), and the respondent, Cities Service Co., which, plaintiff alleges, joined the conspiracy to boycott Iranian oil (Tr. Vol. II, 45-65a):

* Plaintiff Gerald B. Waldron died after suit was commenced and his widow as executrix has been substituted for him as plaintiff (Tr. Vol. IV, 291). We shall refer to plaintiff as if the decedent were still alive.

Facts

The oil industry and properties of Iran were nationalized effective May 1, 1951. Prior to nationalization, Iran, one of the leading oil-producing countries in the world, had been the principal source of oil for the Anglo-Iranian Oil Company ("A.I.O.C."), the sole operator of the country's oil industry for many years. SHWADRAN, THE MIDDLE EAST, OIL AND THE GREAT POWERS 161 (2d ed. 1959).

Oil production in other Middle Eastern countries, such as Iraq, Saudi Arabia and Kuwait, was also held under concessions, almost exclusively by the international oil companies (each is named as a defendant or co-conspirator in this action) which made up the international petroleum cartel. FEDERAL TRADE COMMISSION STAFF REPORT, THE INTERNATIONAL PETROLEUM CARTEL (1952) ("F.T.C. REPORT").* Anticompetitive agreements covering production and marketing of Middle Eastern oil had been made by and between the cartel members during their long monopoly. F.T.C. REPORT 268-74. When nationalization occurred, therefore, two major problems presented themselves, not only to A.I.O.C. but to the remaining members of the Middle Eastern oil cartel as well: first, alternative sources of oil had to be

* The cartel was the subject of an investigation by the staff of the Federal Trade Commission in 1952. F.T.C. REPORT. Later, the Government brought a civil action to break up the cartel, *United States* v. *Standard Oil Co. (New Jersey), et al.*, Civil Action No. 86-27 (S.D.N.Y.), resulting, to date, in the entry of consent decrees against three of the defendants. *United States* v. *Standard Oil Co. (New Jersey)*, 1960 TRADE CAS. ¶69,849 (S.D.N.Y. 1960); *United States* v. *Gulf Oil Corp.*, 1960 TRADE CAS. ¶69,851 (S.D.N.Y. 1960); *United States* v. *Standard Oil Co. (New Jersey) (Texaco, Inc.)*, 1963 TRADE CAS. ¶70,819 (S.D.N.Y. 1963).

found pending a settlement with Iran so that A.I.O.C. could continue to supply its extensive marketing structure; second, Iran had to be made an example of so that other countries would not also nationalize their oil industries.

In the circumstances, the British (A.I.O.C. was 51% owned by the British Government) adopted a policy of starving the Iranians into submission by placing an embargo on British goods destined for Iran and boycotting Iranian oil. SHWADRAN, *supra* at 22, 125, 149-50. The other defendants respected A.I.O.C.'s position that Iranian oil was "stolen" property by refusing to purchase it (Tr. Vol. I, 97a). To replace Iranian oil in its markets, A.I.O.C. turned to Kuwait, where it shared the concession with Gulf Oil Corp. O'CONNOR, THE EMPIRE OF OIL 286 (1955).

On May 25, 1952, plaintiff, acting under his business name, Consolidated Brokerage, secured a contract for the purchase of Iranian oil from the National Iranian Oil Company, the entity designated to operate all Iranian oil properties after nationalization (Tr. Vol. I, 90-92a). This contract, signed by plaintiff in Tehran, gave Consolidated the right to buy 15 million metric tons of crude oil or refined products over a five-year period at $8.75 per ton of crude oil for the first three million tons and at the Persian Gulf posted price less $2.00 per ton for the remaining 12 million tons (*ibid.*). The posted price at that time was $12.89 per ton (R. 23). No payment was required in advance. Under the contract, National Iranian Oil Company agreed not to offer its crude oil or refined products to other buyers in the United States market and, if any such buyer made an offer to it, the Iranians agreed to give Consolidated the first opportunity to supply the prospective purchaser (Tr. Vol. I, 91-92a). Thus, plaintiff was the person

to whom prospective buyers of Iranian oil in the United States would have to turn.

In securing the contract and, later, in attempting to sell oil under it, plaintiff and his associate, Richard S. Nelson, neither of whom had had prior experience in the oil business, sought advice and assistance from James A. Bentley, James E. Zoes and Raymond A. Carter. Bentley was a business consultant and the principal stockholder and president of Oil Recovery Corp., which had a new process for increasing the speed and efficiency of secondary oil recovery (Tr. Vol. I, 89a). Zoes was engaged in the sale of pipe to the oil industry and had contacts in the tanker business (*id.* at 92a; R. 9052-53). Carter was an independent oil broker. He had previously been employed for many years by Cities Service Co. and was well acquainted with W. Alton Jones, Cities' chief executive officer, and with other top officials at Cities (Tr. Vol. I, 93a; R. 10488).

As soon as the contract was signed, plaintiff's group communicated with numerous companies—large and small—in an effort to sell the oil. Several major companies, including some of the defendants, were contacted and offered oil under plaintiff's contract through H. L. Williford, an executive of Hunt Oil Co., who had been contacted by Bentley and Zoes (Tr. Vol. I, 96-97a). Each of these companies refused to deal in Iranian oil (*id.* at 97a).

Zoes contacted several small marketers of oil in the New York area. One company, Sterns, Inc., after indicating an interest in purchasing 15 million barrels of No. 2 fuel oil, subsequently informed Zoes that it depended upon major oil companies for its supplies and that it could not expect to do business with the majors if it dealt in Iranian oil (Tr. Vol. I, 93-94a). Another marketer, Coastal Oil

Company, after first discussing the purchase of five million barrels of petroleum products, decided that its close working relationship with its supplier, Standard Oil Co. (New Jersey), made Iranian oil too hot to handle (Tr. Vol. I, 94-95a). The officials of a third company, Connoil Corp., told Zoes they wanted to purchase one million barrels each of kerosene, No. 2 oil, No. 5 oil and Bunker C fuel oil, on a long-term basis. But then Connoil's president decided that the purchase was not worth alienating its suppliers, the major companies. Connoil officials expressed their fear of the major companies and said they knew of the majors' opposition to any movement of Iranian oil (Tr. Vol. I, 95-96a).

The most promising initial prospect was First National Oil Company of Long Island City, New York, a company which had purchased oil from Mexico following nationalization in that country. However, negotiations eventually fell through when the president of the company admitted he was fearful that, if he dealt in Iranian oil, his supplies would be cut off, as they had been when the company had purchased nationalized Mexican oil (Tr. Vol. I, 97-98a).

Still other prospects were pursued, but in each case the purchaser refused to buy Iranian oil, regardless of plaintiff's advantageous prices. Most often the ground for refusal was that the purchaser was unwilling to deal in Iranian oil because of the threat of reprisal from the cartel companies, upon which he depended for long-range supplies of oil (Tr. Vol. I, 99-101a). One oil company executive said to Zoes, "Are you kidding, trying to bring this oil here?" (Tr. Vol. I, 100a.) Another wrote to plaintiff that, "I am very disappointed to inform you that Kerr-

McGee is not interested in the Iranian crude. The threat of reprisals is too great." (Tr. Vol. I, 101a.)

In mid-June 1952, plaintiff applied to the Chase National Bank for a letter of credit required to be posted under the contract (R. 1875). The issuance of the letter of credit was approved by the Bank, and plaintiff was in the act of signing the necessary papers at the Bank's Grand Central branch office when instructions to deny the letter of credit were telephoned to the branch manager from the main office (R. 1877). When plaintiff and the branch manager demanded an explanation, they were told by a Chase vice-president that the Bank had preferred clients who were large oil companies, that it would not be in the interest of these clients to issue the letter of credit, and that he "was acting on instructions of Colonel Drake." (R. 1881.) Colonel J. F. Drake was, at the time, a director of the Chase National Bank and chairman of the board of Gulf Oil Corp. 1952-53 WHO'S WHO IN AMERICA 676-77 (1952).

After the initial efforts to sell Iranian oil proved fruitless, Carter approached Cities Service (Tr. Vol. I, 101a). Although a substantial company, Cities was at the mercy of the cartel because it owned less than half of the crude oil production needed to meet its daily requirements; in 1952, Cities' deficit was 100,000 barrels per day (*id.* at 101a, 132a). As early as 1948, Cities' top officials, W. Alton Jones and Burl S. Watson, had talked with Colonel Drake, chairman of Gulf's board, about buying part of Gulf's 50% interest in Kuwait (*id.* at 132a). They tried again in 1951, but without avail because Gulf could not sell without A.I.O.C.'s permission (F.T.C. REPORT 131), which, ac-

cording to Drake, was "just out of the question." (R. 10781.)

On June 11, 1952, Bentley and Carter met for the first time with two Cities officers, W. W. Lowe, vice-president in charge of supply and distribution, and A. P. Frame, vice-president in charge of refining (Tr. Vol. I, 101a, 133a). Early in these discussions, Cities expressed an interest in taking over the management of the Iranian oil installations (Tr. Vol. I, 101a). To this end, Cities desired an invitation from Premier Mossadegh to Jones, Cities' chief executive officer, to inspect the Iranian oil facilities with a view to their reactivation (*id.* at 102a). Lowe explained that Cities wanted a management contract under which Cities would receive its compensation in oil. Lowe agreed that if the deal went through, plaintiff was to receive as compensation from Cities between one and two cents per barrel on all of the oil or products taken out of Iran, and plaintiff's contract would be merged into the Cities transaction (Tr. Vol. I, 101-02a; R. 11983).

Armed with a draft of the invitation prepared by Cities (R. 6181, 6197, 11982), plaintiff again flew to Tehran, met with Premier Mossadegh and obtained the desired invitation in substantially the form drafted by Cities (Tr. Vol. I, 102a). Returning to New York, plaintiff acted out a previously arranged charade with Cities, designed to give the appearance that the invitation was unsolicited, and delivered the invitation to Cities' offices amid expressions of "surprise" from Cities officials (R. 6203-04). The invitation was delivered on July 31, 1952, and Cities began immediate preparations for the inspection trip (R. 6203; 10550-62).

In this connection, Burl S. Watson, senior vice-president, prepared a memorandum for Jones, dated August 8, 1952, and labelled "secret," setting forth an outline for the formation of a management company, controlled by Cities, whose members would be "American oil companies only, which have no present interest in the Middle East," thus excluding the cartel companies (Tr. Vol. I, 139a; R. 10565-71). The management company was to reopen the Iranian oil industry and receive a long-term option to purchase crude oil at discount prices as well as a first refusal on any future concessions (Tr. Vol. I, 139-40a; R. 10577-78). Jones and Watson were both of the view that Cities had an excellent opportunity to obtain a concession from Iran and thus eliminate the daily crude oil deficiency which had plagued the company for years. Watson testified:

> "If we could get a concession well located geologically, it would be the best hunting ground we thought in the world for giving us a long-range crude supply, particularly if we could get it on the basis of the last concessions they had granted, which is a 50-50 basis. We could have reason to expect to put oil on board a tanker at costs somewhere approaching the most efficient oil field in the world, the Bergan Field in Kuwait. We didn't know anywhere else in the world that the prospects looked that bright to us.
>
> "At least I had that feeling. Mr. Jones, I believe, shared my views. We thought it was one way in which we could do a service over there and get the first refusal on some of the area that wasn't covered by the Anglo-Iranian concession, it might be very valuable to the company." (R. 10578.)

Throughout the preparation for the trip to Iran and during the first part of the trip, elaborate precautions were

taken to preserve the utmost secrecy (Tr. Vol. I, 135a). Watson, who remained in New York, instructed the members of Jones' party to avoid all outside communication, even with their own wives (*ibid.*). A secret cable code was prepared and used by Jones and Watson in communicating with one another during the trip (*ibid.*). Identity of the members of the Cities group was withheld from the press, and, when news of the trip leaked out, Watson issued a misleading statement to the press in New York and refused to answer a series of pointed questions put to him by the *Oil and Gas Journal* (Tr. Vol. I, 136a; R. 10754-62). The need for secrecy was brought home by advertisements run in the press by A.I.O.C. inviting other oil companies to join in its boycott of Iranian oil and threatening action against them if they refused. One of A.I.O.C.'s advertisements, which appeared in *The New York Times* on August 6, 1952, after alleging that Iran was violating "the basic principle of sanctity of contracts," went on to say:

> "In these circumstances the Company remains confident no oil company of repute nor any tanker owners nor businessmen of standing will countenance any direct or indirect participation in the unlawful actions of the Iranian Government.
>
> "Should, however, any concerns or individuals participate directly or indirectly in transactions affecting the crude oil and refined products concerned, this Company will take all such action as may be necessary to protect its rights in any country." N. Y. Times, Aug. 6, 1952, at 30, cols. 5-8.

At the same time that this warning was being published generally to the world, plaintiff and his associates were favored by a special warning in the form of a registered

letter from A.I.O.C.'s attorneys (Tr. Vol. I, 119a). This letter, marked at plaintiff's deposition as SO(NJ) Ex. W-659 for identification (R. 3488), states:

> "We have been instructed by our client, the Anglo-Iranian Oil Company, Limited, of Britannic House, Finsbury Circus, London, England, to give notice to you as follows:
>
> "It has been brought to our client's notice that you are proposing to arrange for the purchase, acquisition or disposal of crude oil or oil products derived from Southern Persia to which our client has exclusive rights by virtue of its Convention of April 29, 1933 with the Government of Persia. We draw your attention to the fact that any purchase, acquisition or disposal (or any action in aid of such purchase, acquisition or disposal) of such crude oil or oil products would be contrary to international law and a violation of our client's legal rights, and inform you that our client will take all such action as may be considered necessary in order to protect its rights, including its rights in regard to such crude oil or oil products."

Before leaving for Iran, Jones called on President Truman and Secretary of the Interior Oscar Chapman to seek their blessing for the trip (R. 10605). Watson, who accompanied Jones to Washington, was left sitting in Cities' Washington office while Jones conferred privately with these officials (R. 10604).

On August 16, 1952, plaintiff flew to Tehran to make arrangements for living accommodations for the Cities party, consisting of Jones, J. E. Heston (crude production), A. P. Frame (refining), R. V. Whetsel (foreign operations), and J. M. Robeson (Jones' executive secretary) (Tr. Vol. I, 103a).

On the way to Iran, Jones stopped at The Hague, where he conferred for five days with Jan Sandberg (R. 10336, 10348). Sandberg, a partner in the leading private banking firm of Pierson, Heldring & Pierson, represented a large group of Cities stockholders (R. 10534) and, according to Watson, was connected with Royal Dutch/Shell (R. 10693), a major international oil company, a member of the cartel and a co-conspirator named in the complaint (Tr. Vol. I, 75a). In the court below, Cities contradicted Watson's testimony by submitting an affidavit from Sandberg stating that he had no official connection with Royal Dutch/Shell (Tr. Vol. II, 459a). Whatever Sandberg's connection with Royal Dutch/Shell was, Watson was satisfied that a connection existed, and he has never retracted his testimony.

No member of the Jones party participated in these conferences between Jones and Sandberg. Indeed, vice-president Frame, who stopped in Holland with Jones, spent the five days doing "some sightseeing and a lot of waiting." (R. 10348.) Jones did not disclose his discussions at The Hague to Frame (R. 10348), nor did he confide in Watson after the trip (R. 10730-31). Characteristically, Jones carried on his activities with very little help from others (R. 10730-31).

During his stay at The Hague, Jones also telephoned Watson to find out how many tankers would be available to Cities to move Iranian oil to the United States (Tr. Vol. I, 141a; R. 10626). Watson cabled a coded response, saying that Cities could transport 200,000 barrels a day by the end of 1954 (Tr. Vol. I, 141a).

Arriving on August 25, 1952, in Iran, where they were warmly welcomed (Tr. Vol. I, 130a, 138a), Jones and his party remained for approximately three weeks. Frame

inspected the refinery at Abadan and found that it was in good shape and had been well maintained since the departure of the British (R. 10362). Heston inspected the oil fields and found them in good condition and capable of producing a million barrels a day (R. 10974). Whetsel inspected the docks and loading facilities at Abadan, which he found ready for shoal-draft vessels, and the port of Bandar Mashur, which he found ready to receive deep-draft vessels (Tr. Vol. I, 138a; R. 10363). Jones orally reported these findings to Premier Mossadegh (R. 10365-66) and promised to send him a written report later (R. 10726-27, 10935).

As mentioned earlier, Jones had spoken in the past to Colonel Drake, chairman of Gulf's board, in an effort to obtain for Cities a portion of Gulf's interest in Kuwait (R. 10780). By 1952, the talks had turned to a possible purchase by Cities of Kuwait oil from Gulf (R. 10780-81). Gulf and A.I.O.C., two of the members of the cartel, jointly held the entire Kuwait oil concesssion through their ownership of Kuwait Oil Company. F.T.C. Report 131. During his stay in Iran, Jones made a secret trip to Kuwait to visit the oil company there (R. 10734-38). The trip was arranged by Watson after Jones had left for Iran (R. 10377, 10734). So far as is known, none of Jones' assistants accompanied him, nor were plaintiff and his associates, who were in Iran, informed of the trip (R. 2495, 10371, 10445). In fact, the trip was so secret that Cities kept its own attorney in the dark about it, with the result that he stood up in the district court below during argument of the motion for summary judgment in 1960 and flatly stated: "It is true that Mr. Jones was invited to go to Kuwait, but he never got there." (Tr. Vol. III, 121.) The truth

was not revealed until Frame was examined by plaintiff in 1964, after Jones had died (R. 10371).

On the return trip to the United States, while the group was in Paris, Carter requested Jones' assistance in persuading Secretary of the Interior Chapman, who headed the Petroleum Administration for Defense, to support a sale of Iranian aviation gasoline to the United States Air Force under plaintiff's contract (Tr. Vol. I, 105-08a, 147a). Both Whetsel of Cities and an officer of the State Department told plaintiff that, in their opinion, such a sale might well break the blockade of Iranian oil (Tr. Vol. I, 107a; R. 2479-80, 6323). Carter believed that Jones could persuade Secretary Chapman to support the proposed sale. According to a memorandum, dated September 24, 1952, produced by defendants from Carter's file during the deposition of plaintiff (SO(NJ) Ex. C-375 for ident.; R. 2455, 11984), a cable was sent by Carter from Paris on September 21, 1952, to Secretary Chapman, saying that a cargo of aviation gasoline to be lifted by a United States government tanker at the Abadan refinery had been offered to the United States Air Force, subject to clearance by the State Department, and asking for Chapman's support. The memo goes on:

> "Mr. Jones read the cable before we sent it and ok'd its transmission. It was also suggested that Mr. Jones send a cable to Mr. Chapman urging his consideration of furthering the matter with the State Department but Mr. Jones felt that it was better to telephone Mr. Watson and in turn have him call Mr. Chapman concerning this tanker." (Tr. Vol. I, 147a; R. 11984.)

Jones, however, cabled Watson to kill the deal. His message read as follows:

> "WATSON. AS YOU KNOW CARTER IS TRYING DESPERATELY TO HOLD ON TO HIS CONTRACT AND HOPES SOMETHING WILL HAPPEN TO MAKE IT POSSIBLE FOR HIM TO PERFORM THEREUNDER. THIS SEEMS LIKE A REMOTE POSSIBILITY AND I HAVE SO TOLD HIM. AMONG OTHER THINGS HE HAS OPTION AND HAS OFFERED US MILITARY CARGO OF AVIATION GASOLINE FROM ABADAN AND THROUGH SOME OF HIS REPRESENTATIVES IS TRYING TO EXERT PRESSURE THROUGH CHAPMAN OR SENATOR JOHNSON TO GET ACCEPTANCE. WHILE NOT WANTING TO BE PUT IN POSITION OF INTERFERING WITH HIS BUSINESS I TOLD HIM FRANKLY I DOUBTED WISDOM OF THIS ACTION AND DID NOT FEEL UNDER THE CIRCUMSTANCES THERE WAS ANY CHANCE MILITARY WOULD PURCHASE PRODUCTS. HE ASSURED ME IN TEHRAN HE WOULD DROP THE MATTER BUT ON MY ARRIVAL HERE HE TOLD ME HE WAS STILL PURSUING IT AND HAD DRAFTED TELEGRAM TO CHAPMAN USING MY NAME. I ASKED HIM TO DELETE ANY REFERENCE TO ME AND TOLD HIM I WOULD COMMUNICATE WITH YOU. UNDERSTAND WALDRON FLYING TO NEW YORK TONIGHT AND MAY CONTACT YOU THERE TOMORROW. WOULD LIKE YOU TO REACH CHAPMAN AND TELL HIM I SERIOUSLY QUESTION WISDOM OF SUCH ACTION AND DO NOT WANT TO BE CONNECTED WITH IT IN ANY WAY. JONES" (Tr. Vol. I, 148a; R. 10680-81.)

Watson replied by cable the next day that he had delivered Jones' message not only to Secretary Chapman but also to John E. Warren, who was then Deputy Administrator of the Petroleum Administration for Defense, and subsequently, president of Cities (Tr. Vol. I, 148a; R. 10417). The aviation gasoline transaction died (Tr. Vol. I, 149a).

Jones, meanwhile, again stopped off in Holland with Frame to meet with Sandberg on his way to New York (R.

10412-13). Although the meeting was held right at the Amsterdam airport, Frame was once again left out of the conversations (R. 10413).

Returning to New York, Jones' assistants continued to work on the written report which Jones had promised Mossadegh (Tr. Vol. I, 141a). The report went through several drafts, the last to be produced to plaintiff bearing the date of October 31, 1952 (Tr. Vol. II, 1-37a). The October 31 draft reflects the view of both Jones and Whetsel, Cities' expert on foreign operations, that the Iranian oil facilities could be reactivated either with or without British co-operation. Jones had already said at a press conference in Tehran that he did not regard British co-operation as being necessary to reactivate Iran's oil industry and that he was considering how Cities might help to get the Iranian oil industry going again (R. 10382, 10405). N. Y. Times, Sept. 19, 1952, at 8, col. 3. Whetsel, based on his experience with Cities' involvement in Mexico following that country's nationalization of its oil industry, believed that Iran could and should follow Mexico's lead "and start the long slow process of building up new markets." (R. 10427-32.)

The October 31, 1952, version of the report concluded that two solutions to the Iranian oil problem were possible. The first, contemplating quick reactivation of the industry, required British co-operation, and, to this end, Cities proposed an arbitration panel comprised of British and Iranian representatives with "an experienced U. S. oilman" as chairman (Tr. Vol. II, 36-37a). Cities' alternative suggestion, to be put into effect if British co-operation was not forthcoming, called for the National Iranian Oil Company to enter into a long-term agreement with "an American oil company" to purchase Iranian crude and develop the in-

dustry over a longer period of time (Tr. Vol. II, 37a). Thus, the report shows that Cities desired an important role in the solution to the Iranian controversy. Under either solution, Jones, "an experienced oil man," and Cities, the pre-eminent non-cartel "American oil company" known to the Iranians, would play leading roles.

When Jones returned home, he found growing hostility in the industry (R. 10347, 10508). On their part, the British were near apoplexy over his trip, alternately discounting Cities' ability to take over Iranian oil and threatening litigation if it did. N.Y. Times, Aug. 26, 1952, at 1, cols. 2-3; Journal of Commerce, Aug. 27, 1952, at 11, cols. 1-3; Wall Street Journal, Sept. 12, 1952, at 4, cols. 1-2; BUSINESS WEEK, Sept. 27, 1952, at 29.

Though Watson had put plaintiff off by telling him that Cities planned to sit and wait (R. 6322), Whetsel revealed to him Cities' continuing interest in Iranian oil by saying that the situation might open up (R. 6323). At his deposition Watson admitted, contrary to what he had told Waldron in September 1952, that Cities was still interested in getting a concession or a long-term purchase contract in Iran (Tr. Vol. I, 153a; R. 10777-78).

Earlier in the year, the American Petroleum Institute had voted to award Jones an honorary medal, but now they changed their minds, and Jones was not awarded the medal (R. 5034). Whetsel confided to Waldron that at the Institute's convention in November 1952 representatives of the major companies buttonholed Jones and threatened him with a boycott unless Cities stayed out of Iran (Tr. Vol. I, 153a). As Whetsel put it:

> "The Big Boys said that they wished Jones well on his Iranian oil venture and hoped he got a lot of oil

and hoped he got it right away because he wasn't going to get any more from them." (R. 5034.)

Whetsel added in his conversation with plaintiff, "You know, that could be disastrous." (R. 6338.)

Jones promptly got busy repairing his damaged reputation with the majors. The report being prepared for Premier Mossadegh, containing the view that Cities could help Iran through a long-term purchase contract, was apparently never sent (R. 10372, 10727-28). Jones, who had falsely told Secretary Chapman that the invitation from Mossadegh had come unsolicited (Tr. Vol. I, 136a), now obtained a fantastic letter from Chapman, purporting to "recount the history" of Jones' trip to Iran and representing that Jones had reluctantly accepted the invitation at the urging of government officials "in the interests of world peace." (Tr. Vol. II, 392-93a.) Jones' public transition from intermeddler to "honest broker" became complete on January 6, 1953, when he wrote to incoming Secretary of State Dulles and Attorney General Brownell that "the only honorable solution" is an "agreement with Anglo-Iranian, Shell and American companies" (Tr. Vol. II, 394-95a, 397-98a)—just the opposite view from that taken by Jones and Watson in August, from that taken by Cities' foreign operations expert, Whetsel, and from that taken in the alternative recommendation of the now-forgotten draft report to Mossadegh.

Three weeks later, on January 26, 1953, Cities signed a 15-year contract with Gulf to purchase 21,000 barrels per day of Kuwait oil with an option to purchase an additional 30,000 barrels per day (Tr. Vol. II, 252a, 253a, 269a). Though changes in the terms of the contract favor-

able to Cities had been made in the preceding months, it was necessary at the last minute for Jones to communicate directly with Colonel Drake to obtain a most-favored-nations clause, covering future price adjustments, to protect Cities (R. 10804-07).

In summary, when Jones went to Iran, Cities had before it the opportunity to participate in or manage the oil industry of one of the top oil producing countries in the world. It had an immediate need for 100,000 barrels of oil a day in its own markets, and it foresaw the possibility of building up additional marketing strength over the years. Transportation to bring up to 200,000 barrels of oil per day to the United States was available from Cities' own fleet in about two years, and plaintiff had secured an offer to supply a large number of additional tankers over the same period (Tr. Vol. II, 103-04a, 141a; R. 3032-33). Cities' inspection trip revealed that the Iranian oil facilities were in good order and presented no obstacle to reactivation of the industry. The opportunity and need to act were clearly there; the Iranians were enthusiastic; but Cities declined to proceed.

Plaintiff meanwhile had continued his efforts to sell Iranian oil under his contract. He contacted many companies (Tr. Vol. I, 104-15a), including several on the West Coast of the United States (*id.* at 108-13a), where there was a crude oil shortage of 100,000 to 200,000 barrels of crude oil per day (*id.* at 108a). One such company, Richfield Oil Corporation, faced a daily shortage of 20,000 barrels (*id.* at 112a). Richfield was a large integrated company jointly controlled by Cities and Sinclair, each of which held one third of the equity in the company (*ibid.*).

The negotiations proceeded to the point that plaintiff, at Richfield's request, had a five-gallon sample of Iranian crude oil shipped to Richfield's laboratory for analysis, when plaintiff was suddenly informed by telephone that Richfield had decided it had no need for Iranian oil (*id.* at 112-13a). No explanation for the decision was offered, although the Richfield official admitted that the oil met their specifications and that the West Coast shortage still existed (*id.* at 113a).

In June 1953, while the Richfield negotiations were pending, plaintiff's contract with National Iranian Oil Company expired (R. 399-400). Despite plaintiff's efforts and the known need of many American marketers, plaintiff had been unable to sell one drop of oil under the contract.

The Iranian Oil Consortium was formed in 1954 to run the Iranian oil industry (Tr. Vol. II, 281a). The Consortium was comprised of the cartel members, each of which took a percentage that roughly maintained the 60%-40% participation by British and American companies, respectively, which had existed in the Middle East since 1928. *Hearings on Current Antitrust Problems Before the Antitrust Subcommittee of the House Committee on the Judiciary,* 84th Cong., 1st Sess., ser. 3, pt. II, at 764 (1955). When it was feared that the monopolistic nature of the Consortium appeared too obvious, the members gave up five percent of their interest to be divided among deserving American independents (Tr. Vol. II, 40a, 288a). Cities was awarded such a share and turned it over to Richfield (*id.* at 369a).

Proceedings Below

The complaint was filed on June 11, 1956. In the complaint, plaintiff alleged that following nationalization in Iran the defendants other than Cities, pursuant to a plan to monopolize Middle Eastern petroleum and petroleum products, conspired among themselves to boycott Iranian oil and to prevent plaintiff from exploiting his contract (Tr. Vol. II, 55-56a). Plaintiff further alleged that Cities joined the other defendants in the conspiracy and that Cities, "in furtherance of defendants' scheme broke off further negotiations with plaintiff and the National Iranian Oil Company and refused to enter into any contract or arrangement with reference to Iranian petroleum." (*Id.* at 60-61a.) Plaintiff also alleged that, in return, Cities received a huge quantity of Kuwait oil far below the posted price and the opportunity to participate in the Consortium which eventually took over the Iranian oil industry (*ibid.*).

Defendants' immediate response to the complaint was to secure an order extending their time to answer until after they had an opportunity to examine plaintiff. In addition, plaintiff was stayed from all discovery until his examination was completed and defendants answered the complaint (R. 11045-48).

Plaintiff's deposition commenced on September 10, 1956. After he had been examined for 62 days (comprising more than 4200 printed pages of testimony) and after 825 exhibits had been marked for identification, plaintiff on December 30, 1957, moved, pursuant to rule 30(d), Fed. R. Civ. P., to terminate the deposition upon the ground that continuance of the deposition was in bad faith and designed to annoy, embarrass and oppress plaintiff, since defend-

ants could no longer claim that they could not adequately frame their answers to the complaint or formulate motions to dismiss (R. 11051-56) or that they did not know plaintiff or the basis for his claim (Tr. Vol. II, 78a). Plaintiff urged that the time had come when the complaint should be answered and he should be permitted to have his own discovery like any other litigant. The motion was heard by Judge William B. Herlands,* who denied it from the bench and, on his own motion, granted defendants 52 additional days to conclude their deposition of plaintiff and added 174½ days more to examine his associates (R. 11159-63). Moreover, the stay of all discovery by plaintiff was enlarged so as to prevent plaintiff from undertaking any discovery until after defendants had examined each of plaintiff's associates, who were not even parties to the action (R. 11162). None of the defendants had moved or cross-moved for or otherwise requested such relief. The order, signed February 11, 1958, and still in effect today, has since been cited by Professor Moore as the classic example of the means by which powerful defendants can abuse the discovery process and "stymie the action for an inordinate length of time." 4 MOORE, FEDERAL PRACTICE ¶26.13[2], at 1151-52 (2d ed. 1966).

Cities' motion for summary judgment was made on April 8, 1960, shortly after completion of Cities' examination of plaintiff. The examinations of plaintiff's associates had not then been completed, so plaintiff was forced to face the motion without having received an answer from any defendant and while stayed from asking a single question.

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* Later, on May 1, 1959, Judge Herlands was assigned to the case for all purposes (R. 11182).

The motion was supported by the affidavits of one George H. Hill, Jr., a lawyer for Cities (R. 9848) who, in 1963, became its general counsel. 1966-67 WHO'S WHO IN AMERICA 963 (1966). Hill had never met plaintiff (R. 9865) and knew nothing about plaintiff's dealings with Jones or Cities' Iranian venture (R. 9902). Hill's moving affidavits and supporting documents failed to deny participation by Cities in the conspiracy to boycott Iranian oil and artfully sought to establish only that the Kuwait contract with Gulf and Cities' opportunity to participate in the Iranian Oil Consortium were not payoffs for any conspiracy (Tr. Vol. II, 146-370a, 371-411a). Although it was Jones who received the invitation to go to Iran, who talked privately with United States Government officials before leaving for Iran, who talked privately with Sandberg on the way to and from Iran and who talked privately with Premier Mossadegh while in Iran, who went alone on a secret trip to Kuwait, who kept decisions on Cities' involvement in Iran to himself after returning from Tehran, and who was threatened at the A.P.I. convention, Cities chose not to submit Jones' affidavit. Plaintiff's allegations of conspiracy were not denied and remain undenied to this day.

Upon the argument of the motion on May 9, 1960, plaintiff's counsel first pointed out to the court that plaintiff had been barred completely from normal discovery (Tr. Vol. III, 66-67), that the proof of plaintiff's case was in the possession of the defendants, not just Cities but the other defendants as well (*id.* at 118), and that, consequently, the motion should "be denied outright as impossibly premature." (*Id.* at 81.) As an alternative, counsel suggested that plaintiff be relieved from the crippling stay of discovery so as to have an opportunity to obtain facts

with which to oppose the motion (*ibid.*). While asking for discovery of all defendants, since proof of Cities' membership in the conspiracy might rest in the files of any one of them, counsel urged that the place to begin was with Jones (*id.* at 118). Whetsel, who actively sought Cities' participation in Iran and who told plaintiff of the threat to Cities at the American Petroleum Institute convention, had already been lost to plaintiff by death on January 12, 1960.

The court reserved decision on Cities' motion and held it under consideration for nearly a year. On March 30, 1961, the court entered an opinion (Tr. Vol. I, 70-72a) containing several observations "[f]or the guidance of counsel" which, in unmistakable terms, revealed that the court had already concluded, before plaintiff was given a chance at discovery, that plaintiff's entire case was without merit. Before plaintiff was allowed to ask a single question of Cities (or anyone else), the court observed that, "It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact." (*Id.* at 71a.) Observing that "*even this* private antitrust case" had indirect law enforcement aspects, the court nonetheless "judged" plaintiff's claim to be "so insubstantial" that plaintiff was not to be allowed the usual pre-trial proceedings (*id.* at 71-72a; emphasis added).

In their full text, the court's "observations" are as follows:

> "1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.
>
> "2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based

only on suspicion and on a gossamer interference drawn from the mere sequence of events.

"3. But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. This court has examined virtually every reported summary judgment decision rendered in this circuit since *Arnstein* v. *Porter*, 154 F.2d 464 (2d Cir. 1946), over one thousand in number. The rationale and philosophy of *Arnstein* v. *Porter* have not been attenuated by the subsequent course of decisions.

"4. In view of (a) the surface complexity of the case, (b) the indirect law enforcement aspects of even this private antitrust case (c) the very extensive pretrial examinations of the plaintiff already conducted by the defendants and the complete absence of any pretrial examination of any defendant by the plaintiff—it would appear to be fair to postpone a decision of the summary judgment motion and to afford the plaintiff an opportunity to engage in appropriately supervised discovery and related pre-trial proceedings.

"5. Because plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record, so insubstantial, the plaintiff will not be given carte blanche authority to conduct untrammeled pretrial proceedings. Such proceedings will be closely regulated. The usual Federal rule permitting fishing expeditions will be curtailed. A just and workable balance will be maintained between the respective interests of the opposing parties." (Tr. Vol. I, 71-72a.)

At the time plaintiff's case was "judged" to be "insubstantial," the court had before it only a controlled record, selected by Cities, consisting principally of affidavits and documents from Hill, a lawyer, who had not gone to Iran

with Jones (R. 9880), who had not met plaintiff (R. 9865) and who answered plaintiff's allegation of conspiracy only by addressing himself to the alleged rewards for the plot (Tr. Vol. II, 150a).

At the hearing on the proposed order to implement the court's opinion, plaintiff again urged that he was entitled to examine Jones first of all (Tr. Vol. III, 136). However, Cities, responding to the obvious invitation from the court to submit a restrictive order, contended that only Hill, whose affidavits had been submitted by Cities in support of the motion, should be examined and that only two subjects, the Kuwait contract with Gulf and Cities' opportunity to participate in the Consortium, should be explored (*id.* at 133-34). Cities based its contention upon the pretense that plaintiff's case would necessarily stand or fall with his ability to prove two items of evidence pleaded in the complaint, Kuwait and Consortium. In accepting this argument, the court focused on *why* Cities conspired and ignored the basic issue—conceded to be "the true question" by Cities' counsel on the original argument of the motion and formulated by him to be—"Did Cities conspire with others to boycott the plaintiff?" (Tr. Vol. III, 60.)

Announcing the approach it had decided to use to curtail, limit and restrict plaintiff in the conduct of his case, the court said:

> "'Now, this is going to be a circumscribed and restricted examination, and I am not going to let the plaintiff examine as many people as he wants, nor am I going to permit the plaintiff to conduct the kind of examination that ordinarily is permitted under Rule 26 and the related rules.'"

* * *

"I shall approach—I tell you now, Mr. Beshar [plaintiff's counsel], I am approaching this matter with pragmatic caution. I will deal with this in accordance with the dynamics of the situation. Instead of entertaining applications to narrow the examination, which is the ordinary situation, I am looking through the telescope at the other end: I am starting out with the narrow examination and then, as occasion may warrant and considered on the merits in the light of the situation, I will determine whether and to what extent there should be enlargement of the boundaries of examination because I believe, having read the thousands of pages of testimony and exhibits and the briefs in this matter, that the plaintiff at this point has not presented a sufficient basis to justify the ordinary Rule 26 type of examination." (*Id.* at 137, 139-40.)

The restrictive order proposed by Cities permitting only Hill's deposition was signed at the conclusion of the hearing on May 3, 1961 (Tr. Vol. III, 143), and filed the next day (Tr. Vol. I, 68-70a). However, plaintiff was made to wait yet another year before commencing his discovery, because the court had directed that the scheduled depositions of the nonparty witnesses, whose testimony was merely cumulative of the 6,459 pages of plaintiff's testimony already taken, must be completed prior to the commencement of Hill's deposition (Tr. Vol. I, 69a; Vol. III, 127). During this delay, Jones, who knew all there was to know about Cities' Iranian venture, was killed in an airplane crash on March 1, 1962. N. Y. Times, Mar. 2, 1962, p. 15.

Hill's deposition could hardly have been more stultifying. The examination proved nothing because Hill knew nothing. He had not been a participant in the Iranian venture, had not been privy to Jones' thoughts or plans and

had not been informed of Jones' activities. The extent of Hill's knowledge concerning Jones' trip to Iran, he testified, was that he was "aware" that Jones was there (R. 9880). As Hill admitted:

> "Q. As far as Iran was concerned he kept pretty much to himself; is that correct? A. That's correct, in so far as I was concerned." (R. 10035.)

Hill also admitted that in preparing his affidavit in support of Cities' motion he never discussed the facts with Jones, nor did he review Jones' files (R. 9871, 9981). He did not talk to Frame nor review Frame's files (R. 9854, 9981). He did not talk to Watson, nor Lowe, nor did he review their files (R. 9853, 9854, 9871, 9982). The result was predictable: Hill, who knew nothing of plaintiff or Cities' Iranian venture and did nothing to inform himself, could safely testify that he knew of no connection between Iran and Cities' contract with Gulf for Kuwait oil or Cities' opportunity to participate in the Consortium. His testimony was that of a nonparticipant.

The court's order directing the examination of Hill made no provision for the production of documents, even on the limited subjects into which plaintiff was permitted to inquire (R. 9845). Perhaps out of embarrassment, Cities' counsel volunteered some documents (R. 9839), but the selection of documents for production remained in Cities' discretion, and, needless to say, documents pertaining to Cities' dealings in Iran and with plaintiff were not produced.

Following the completion of Hill's deposition, plaintiff, in May 1963, moved for further discovery, asking specifically for the written statements which had been prepared in 1956 by Jones' colleagues, for their underlying

files and for the depositions of the few surviving Cities officers who had dealt with plaintiff (R. 11762-72). It had been revealed during Hill's deposition that, shortly after commencement of the action, Watson, recognizing the important issues in the case, called upon a number of Cities executives (1) to prepare a detailed memorandum of all conversations and other dealings with plaintiff and the members of his group and (2) to produce all files relating to Jones' trip to Iran in 1952 (R. 10008-11, 11988). Since the documents had already been gathered together, production could cause no conceivable hardship.

At the oral argument, on May 27, 1963, plaintiff again requested discovery of the other defendants as well as discovery of Cities (R. 11799). Cities, of course, urged that summary judgment should now be entered in its favor. Despite the fact that Hill's demonstrated lack of knowledge had prevented plaintiff from learning anything about Cities' involvement in the alleged conspiracy to boycott Iranian oil, the court, still "looking through the telescope at the other end" (Tr. Vol. III, 139), required that plaintiff set forth "a complete, detailed inventory listing whatever facts or circumstances there are that the plaintiff is relying upon to support his pending request for further discovery * * *" (R. 11811), and even asked plaintiff's counsel to specify the very date on which Cities joined the conspiracy:

> "The Court: What is the date, the first date that you claim evidenced the plan or intention or conduct on the part of Cities Service to boycott the plaintiff?
>
> "Mr. Beshar: Most respectfully, your Honor, I'm going to decline to go down that route with you. This underlines the entire, in my mind, [error] of the plai

here. You expect me in advance of any meaningful discovery to start giving you dates at which [a] conspiracy commenced." (R. 11823.)

Because the court again focused on the alleged "payoffs" for Cities to join the conspiracy rather than on whether Cities had in fact conspired (R. 11794), plaintiff, on July 12, 1963, amended his complaint to allege simply that, at a date unknown to plaintiff, Cities joined the conspiracy to boycott Iranian oil (Tr. Vol. I, 78a, 80a). The allegations concerning the contract with Gulf to buy Kuwait oil and the opportunity for Cities to participate in the Iranian Oil Consortium, which were two items of evidence, were removed from the complaint, though not, of course, from plaintiff's case.

Again, the court held the motion under advisement for about a year until, on June 23, 1964, it granted plaintiff further but still narrowly limited discovery of Cities (Tr. Vol. I, 21a, 54-58a).*

The resultant order (*id.* at 17-20a), dated July 9, 1964, finally gave plaintiff the chance to examine some of the Cities officers who had some knowledge of Cities' dealings in Iran, but the order was so restricted in time, subject matter and scope so as to make the discovery privilege substantially less than that to which a federal litigant is entitled.

In time, the order was limited to the period from the date when plaintiff's associates first met with Cities to a date just after the Jones entourage returned from Iran, even though much of Cities' Iranian activity occurred out-

* In the June 23, 1964, opinion, the court, in addition, denied a motion for summary judgment by the remaining defendants. The opinion is reported at 231 F. Supp. 74.

side this period (Tr. Vol. I, 152-55a). In subject matter, the order was limited to specified items encompassing some of the relevant issues but preventing the development of others (*id.* at 155-57a). In scope, the order was limited to "conversations and communications," not facts (*id.* at 151-52a).

The provisions of the order restricting plaintiff's discovery were as follows:

> "(a) The two issues defined in the Court's order filed May 4, 1961;
>
> "(b) Conversations and communications, written or oral, from on or about June 11, 1952, to, on or about, October 1, 1952, between defendant Cities Service Company and any other defendant pertaining to:
>
> "(1) Waldron, Brown, Nelson, Bentley, Zoes, or Carter;
>
> "(2) The refining, marketing, distributing, producing or managing of Iranian oil;
>
> "(3) Plaintiff's proposed deal, contract, agreement or other arrangement with the Iranian Government;
>
> "(4) The subject of defendant Cities Service Company's giving up, terminating, dropping or discontinuing negotiations with the Iranian Government in regard to any of the matters mentioned in item (2) *supra*;
>
> "(c) Conversations and communications, written or oral, from on or about June 11, 1952, to, on or about, November 1, 1952, between deponent and any other Cities Service Company official or employee pertaining to the subjects mentioned in items (1) through (4) of subparagraph (b) *supra;*

"(d) Conversations and communications, written or oral, from on or about June 11, 1953, to, on or about, September 30, 1953, between defendant Cities Service Company and any other defendant pertaining to the subject of negotiations between plaintiff and Richfield Oil Corporation concerning the purchase of Iranian oil;

"(e) Conversations and communications, written or oral, from on or about June 11, 1953, to, on or about, September 30, 1953, between deponent and any other official or employee of defendant Cities Service Company pertaining to the subject set out in subparagraph (d) *supra.*" (Tr. Vol. I, 18-19a.)

The witnesses designated by the court were Burl S. Watson, Cities' chairman of the board, who had been executive vice-president and second in command to Jones in 1952; Alfred P. Frame, vice-president and refinery expert, who had inspected the Abadan refinery in 1952; and J. Edgar Heston, who was the expert on oil production matters on the 1952 trip.* Cities was directed to produce documents "which relate to the subjects upon which defendant Cities Service Company is to be examined * * *." (Tr. Vol. I, 19-20a.)

The depositions of Watson, Frame and Heston, which followed in the summer of 1964, threw a great deal more light on Cities' 1952 Iranian project. Many of the facts set forth earlier, pp. 10-20, were discovered by plaintiff in the course of these depositions. For example, it was revealed, for the first time, that Cities had concluded that

* Four Cities executives with whom plaintiff dealt had already died, Jones, Whetsel, Lowe and George Shaw, the Cities' official with whom plaintiff performed the charade of the "surprise" delivery of the Mossadegh invitation to Jones.

it could develop markets for Iranian oil over a period of time; that Jones visited Jan Sandberg, an ideal go-between to approach the cartel; that Jones had gone to Kuwait to visit installations maintained by two of the alleged conspirators (a trip previously denied by Cities' counsel); that Jones had secretly undermined plaintiff's efforts to break the blockade by means of a shipment of aviation gasoline; and that Cities had established, shortly after Jones returned from Iran, an "Iranian room," staffed by an Iranian, to maintain separately its documents relating to Iran (Tr. Vol. I, 152a).

The time limitations of the order foreclosed plaintiff in his effort to conduct complete discovery (Tr. Vol. I, 152-55a). Included in Cities' moving papers were sixteen documents bearing dates later than November 1, 1952 (exhibits 66-81 to Hill's supplementary affidavit, Tr. Vol. II, 384-411a), concerning subjects other than the contract with Gulf for Kuwait oil and the Consortium, and revealing at least some of Jones' communications about the Iranian oil controversy with other oil executives, Iranians and United States officials. Despite the fact that Cities relied on these documents to obtain summary judgment, plaintiff was given no opportunity to discover what documents bearing on the issues Cities omitted from its submission on the motion. Plaintiff was also refused access to the originals of the documents and prevented from any examination concerning their preparation or use. Cities' counsel stated:

> "Mr. Costikyan: * * * The mere fact that something was submitted in behalf of the motion for summary judgment doesn't make it germane on this examination.

"Mr. Beshar: I just want to have the record clear that I'm being blocked from any examination with respect to any of the documents in support of your motion for summary judgment simply because of the fact that they are after November 1, 1952.

"Mr. Costikyan: Yes. I think the order that Judge Herlands signed blocks you from such an examination." (R. 10420.)

Inquiry into communications between Cities and any other defendant was arbitrarily cut off at October 1, 1952. Plaintiff was not even permitted to question the witnesses concerning the discussion within Cities of the effect of the threats of boycott made to Cities by the major oil companies at the American Petroleum Institute convention merely because the convention took place a few days after November 1, 1952, the artificial cut-off date on discussions between Cities personnel (Tr. Vol. I, 153a; R. 10423).

Similarly, the order did not permit plaintiff to see the written reports made by Cities officials at Watson's request in 1956 since, while they were made when the events were relatively fresh in the witness' minds, they were, nevertheless, outside the permissible time period (Tr. Vol. I, 155a).

Perhaps the most extreme example of the arbitrary manner in which plaintiff's questioning was cut off by the time limitations of the order occurred when plaintiff was blocked from asking about the "Iranian room" (Tr. Vol. I, 152a). Plaintiff was stopped because, although Cities hired an Iranian employee to staff the room before November 1, she apparently did not actually get the room set up until after that date (*ibid.*; R. 10970-71).

The subject matter of plaintiff's discovery was also narrowly confined. Although Watson testified that Cities' main interest was to get a concession for Iranian oil in the

ground, plaintiff was not allowed to inquire whether Cities had actually negotiated for or obtained such a concession inasmuch as the order did not list "concessions" as a subject of inquiry (Tr. Vol. I, 156a). Plaintiff had testified that during the trip to Iran, Jones expressed an interest in obtaining a concession in Baluchistan, an area in Iran not covered by A.I.O.C.'s former concession. Plaintiff was blocked from this promising lead, however, despite Watton's corroboration of plaintiff's testimony that a concession in Iran was Jones' main interest (*id.* at 156-57a).

The requirement of the order limiting the examination to conversations and communications between Cities personnel or between Cities and any other defendant had the effect of prohibiting plaintiff from examining the witness as to conversations between Jones and Premier Mossadegh, or conversations between the witness and plaintiff or members of plaintiff's group, or conversations between Jones and Sandberg. Even Jones-Mossadegh communications which were discussed with other Cities personnel were not produced by Cities on the ground that they were not, themselves, communications between Cities personnel (R. 10555). Thus, when asked to produce the invitation from Mossadegh to Jones which plaintiff had obtained, Cities' counsel said:

> "I decline to produce it. I don't think it is within the scope of the order." (R. 10311.)

The effect of this was, of course, to deprive plaintiff of access to any of Jones' documents except those interoffice memoranda Cities produced (Tr. Vol. I, 152-55a).

As to conversations between the witness and plaintiff's group, the order had this result:

"Mr. Beshar: Are you taking the position that if this witness discussed Iranian oil with, for example, someone like plaintiff, directly, and there was no other Cities Service person present, that I may not question him on that area?

"Mr. Costikyan: Of course." (R. 10485.)

When Watson admitted that Sandberg, whom Jones saw for five days on the way to Iran, was connected with Royal Dutch/Shell, Cities' counsel immediately objected to any further questioning about Sandberg, on the ground that, while Royal Dutch/Shell was named in the complaint as a co-conspirator, the order only permitted examination into communications with defendants (Tr. Vol. I, 155a; R. 10693-94).*

Plaintiff could not ask witnesses what they did or what they knew but only what they discussed with other Cities employees. This led to interruptions and objections by counsel which would be unthinkable under normal discovery procedures. For example, when counsel asked Heston what he learned on the trip to Iran, the following ensued:

"Q. Mr. Heston, what did you learn on that trip, if anything, that you did not already know when you went over?

"Mr. Costikyan: Objection, instruct him not to answer.

"Mr. Beshar: On what grounds?

* Having blocked plaintiff from asking about Sandberg, Cities felt perfectly free to approach Sandberg *ex parte* and submit his affidavit denying the connections with Royal Dutch/Shell which Watson had admitted (Tr. Vol. II, 459a). Significantly, Sandberg's affidavit was silent as to his discussions with Jones when the latter was on his way to and returning from Iran.

"Mr. Costikyan: On the ground that what he learned is not within the scope of this examination. You are not entitled to an examination as to what this man learned. You are entitled to an examination as to what he discussed with other Cities Service officials." (R. 10909-10.)

Again, when counsel asked Heston what he did in connection with revisions of the proposed report to Mossadegh, the result was as follows:

"Q. Give us your general recollection of, when you returned from Iran, what you did and were told with respect to these revisions.

"Mr. Costikyan: Can't we limit this, Mr. Beshar, to conversations with other Cities Service personnel? What he did is not within the scope of this order." (R. 10975.)

An attempt to draw out Frame's recollection by asking him what he did during the stay in Tehran was also thwarted:

"Q. Well, now, you stayed there two weeks in that house. Tell me, what did you next do with respect to Iranian oil business? A. Well, I think we met with the various officials of the National Iranian Oil Company—

"Mr. Rifkind: Tell us only about conversations." (R. 10353.)

At one point, plaintiff was caught red-handed trying to establish facts. Watson was asked whether the companies operating in Kuwait had helped to replace Iranian oil on the market following nationalization:

"Q. * * * Certainly the companies operating the Kuwait concession were playing a major role in making up the deficit; is that correct?

"Mr. Costikyan: Objection. We are getting beyond the area of the order, Mr. Beshar. Let's limit it to the scope of the order.

"Mr. Beshar: I am trying to get to the conversations that—

"Mr. Costikyan: No, you are not. You are trying to establish some facts.

"Mr. Beshar: Of course I am trying to establish some facts.

"Mr. Costikyan: And they are not facts as to conversations." (R. 10598-99.)

Following the depositions of Frame, Watson and Heston, the pattern was repeated: plaintiff moved for further discovery not only of Cities but of Carter and of the other defendants (Tr. Vol. I, 126-27a); Cities urged that summary judgment be granted without further discovery. Argument took place on February 9, 1965, and on September 8, 1965, the court granted Cities' motion and denied plaintiff's application for further discovery (*id.* at 5-17a).

The court commenced its opinion by quoting from its 1961 decision in which it relegated plaintiff to the status of a second class litigant (Tr. Vol. I, 7a). Having made plaintiff look "through the telescope at the other end" (Tr. Vol. III, 139) in the discovery subsequently afforded him and not having permitted plaintiff "the ordinary Rule 26 type of examination" (*id.* at 140), the court was able to reach the conclusion which it had forecast in 1961. Thus, having prevented plaintiff from obtaining the facts about the conspiracy, the court entered judgment against plaintiff for

having failed to set them forth. Remarkably, the court now found that "plaintiff has had ample time and opportunity to discover and present 'concrete particulars' demonstrating that there is a genuine issue for trial." (Tr. Vol. I, 16a.)

In affirming, the court of appeals said:

> "Following extensive discovery by Waldron under the Kuwait and Consortium theories, Cities Service first moved for summary judgment on April 8, 1960, but the trial court adjourned the motion and granted Waldron further limited discovery." (Tr. Vol. III, 175.)

As this passage reveals, the court of appeals was under the mistaken impression that plaintiff had already completed extensive discovery of Cities before Cities moved for summary judgment. The court of appeals' opinion also stated, incorrectly, that plaintiff had had three separate opportunities at discovery of Cities (Tr. Vol. III, 175, 2d para.). The fact is that plaintiff had no discovery of Cities before the motion was made and the discovery he was allowed thereafter was anything but extensive. Under the court's mistaken view of the facts, Judge Herlands' limitations on plaintiff's discovery may have seemed reasonable, because it may have appeared that plaintiff was attempting to obtain something more than normal discovery under rule 26. Only if the court of appeals equated extensive discovery on Kuwait and Consortium with general discovery on plaintiff's whole case does its conclusion that the district court did not abuse its discretion become understandable.

ARGUMENT

Summary of Argument

In staying plaintiff from all discovery while defendants were permitted to examine plaintiff and each of his associates one by one for scores of deposition sessions, the district court acted beyond its authority. The error was compounded when, after Cities moved for summary judgment, plaintiff's discovery in aid of his opposition to the motion was severely restricted. Plaintiffs in antitrust actions should be given wide, not narrow, discovery. Any plaintiff is entitled to liberal discovery on an issue of conspiracy for which the only source of evidence is defendants' files and testimony. In refusing such discovery, the courts below so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. (Point I, *infra.*)

On its motion for summary judgment, the initial burden rested on Cities to demonstrate that there was no genuine issue of fact to be tried. Under the authorities, Cities could not even begin to sustain that burden without denying its participation in the conspiracy. This Cities never did. In relying upon the 1963 amendment to rule 56(e), Fed. R. Civ. P., to shift to plaintiff the burden of demonstrating the existence of a genuine issue of fact, the courts below went far beyond the intention of the framers of the amendment and committed error. (Point II, *infra.*)

Finally, no matter who had the burden of showing the existence of a triable issue, summary judgment should not have been granted because, even on the underdeveloped record at his disposal, plaintiff demonstrated the existence of genuine issues of material fact with regard to Cities' participation in the conspiracy. (Point III, *infra.*)

POINT I

The lower courts erred in limiting plaintiff's discovery.

Plaintiff comes to this Court 11 years after the filing of his complaint without having had any general discovery and without having received an answer to his complaint from defendants. Plaintiff has answered questions on oral deposition for thousands of pages, has voluntarily produced every document in his files and has opposed two motions for summary judgment. Rule 12, Fed. R. Civ. P., requiring defendants to answer within 20 days after the service of a summons and complaint, has been forgotten; rules 26 through 37, permitting discovery by "any party," have been read to mean discovery by any party except the plaintiff in this action; and rule 1, which requires that the federal rules "be construed to secure the just, speedy, and inexpensive determination of every action," has been ignored. In short, plaintiff has been treated differently from any other federal litigant.

When, after he and his associates had been exhaustively examined, plaintiff was granted discovery of Cities, the cry of "fishing expedition" was raised by Cities (Tr. Vol. III, 89) and was heeded by the district court, which ruled that, "The usual Federal rule permitting fishing expeditions will be curtailed." (Tr. Vol. I, 72a.) Before plaintiff had asked one question the court admonished him:

> "I tell you now in as plain English as I have command of, and in so doing I am reiterating what I said

in the memorandum, that I am not going to let the plaintiff in this kind of situation harass Cities Service." (Tr. Vol. III, 137.)

Compare the treatment plaintiff received with that promised federal litigants in the landmark case of *Hickman* v. *Taylor*, 329 U. S. 495, 507 (1947):

> "We agree, of course, that the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession."

In a private antitrust conspiracy action, the need for liberal discovery rules is particularly compelling, not only because of the element of public interest in vigilant enforcement of the antitrust laws through private actions, *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322, 329 (1955), but also because of the very nature of an antitrust conspiracy, in which, frequently, the only source of evidence of conspiracy open to a plaintiff is the conspirators themselves. *Cf. Poller* v. *Columbia Broadcasting System, Inc.*, 368 U. S. 464, 473 (1962).

Discovery by an antitrust plaintiff must be thorough. Proof of conspiracy is almost always circumstantial—a memorandum, a letter, a damaging statement on cross-examination, an unexplained act against self-interest and an anticompetitive result may make up the plaintiff's case. The crucial documents may be buried in far-flung files or be

in the hands of a co-conspirator. The plaintiff must be given the chance to bring them all together to prove his case. When the plaintiff is delayed in conducting discovery, so that memories fade and documents become mislaid, the need for thoroughness is even more crucial.

All of the defendants in this action are charged with having entered into one common conspiracy to boycott Iranian oil. Plaintiff has uncovered several instances of meetings which could have led to unlawful agreement between Cities and the other alleged conspirators; at one such meeting a boycott was openly threatened against Cities if it interfered in Iran. This Court has long recognized the futility of trying to understand a conspiracy by a disjointed examination of its separate members and their individual declarations. In a case involving a conspiracy to run a corner in cotton, this Court declared:

> "It hardly needs statement that the character and effect of a conspiracy is not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." *United States* v. *Patten,* 226 U. S. 525, 544 (1913), citing *Montague & Co.* v. *Lowry,* 193 U. S. 38, 45-46 (1904) and *Swift & Co.* v. *United States,* 196 U. S. 375, 386-87 (1905).

This statement continues to embody the Court's policy for the evaluation of evidence in antitrust conspiracy cases. *Continental Ore Co.* v. *Union Carbide & Carbon Corp.,* 370 U. S. 690 (1962). *Continental* involved a private treble damage action under §4 of the Clayton Act, alleging a conspiracy to violate §§1 and 2 of the Sherman Act. The Court held that the court of appeals erred in concluding that the evidence was insufficient to support a jury verdict

for plaintiff and that the verdict should have been directed for defendants. In remanding the case for a new trial, Mr. Justice White declared for the Court:

> "It is apparent from the foregoing that the Court of Appeals approached Continental's claims as if they were five completely separate and unrelated lawsuits. We think that this was improper. In cases such as this, plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clear after scrutiny of each. '* * * [T]he character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. United States v. Patten, 226 U. S. 525, 544 * * *; and in a case like the one before us, the duty of the jury was to look at the whole picture and not merely at the individual figures in it.' *American Tobacco Co.* v. *United States,* 147 F.2d 93, 106 (C.A. 6th Cir.)." 370 U. S. at 698-99.

The rule of *Patten* and *Continental* follows the established principle that apparently innocent acts may be unlawful when viewed cumulatively with the overt acts of co-conspirators which may themselves appear equally innocent. *American Tobacco Co.* v. *United States,* 328 U. S. 781, 809 (1946); *Swift & Co.* v. *United States, supra,* at 396, citing *Aikens* v. *Wisconsin,* 195 U. S. 194, 206 (1904). This reasoning, commanding a total as opposed to a piecemeal view of the facts at trial, must, *a fortiori,* be applied to a motion for summary judgment at the pre-trial discovery stage.

Indeed, because of the dangers inherent in trying a case by affidavit where the facts are in the exclusive control of the moving party and its co-conspirators and the witnesses

and affiants are heavily motivated by self-interest in favor of the moving party, cases involving such circumstances should be brought to trial rather than be disposed of summarily, even though discovery may be complete. *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U. S. 464, 473 (1962); *Sartor* v. *Arkansas Gas Corp.*, 321 U. S. 620, 628 (1944); 6 MOORE, FEDERAL PRACTICE ¶56.15[5], at 2398 (2d ed. 1966).

The error of the courts below began not later than the order of February 11, 1958, signed by Judge Herlands. Plaintiff had already been barred from any discovery for nearly two years. At that point, after 62 days of testimony by plaintiff and unrestricted perusal of the documents of plaintiff and his associates, defendants could no longer seriously contend that they needed more information in order to answer or move against the complaint or that there was any legitimate reason to continue the stay of discovery. Continuance of the stay resulted in discrimination against plaintiff in favor of defendants, contrary to this Court's statement in *Schlagenhauf* v. *Holder*, 379 U. S. 104, 113 (1964):

> "Discovery 'is not a one-way proposition.' *Hickman* v. *Taylor*, 329 U. S. 495, 507. Issues cannot be resolved by a doctrine of favoring one class of litigants over another."

Discovery under the federal rules cannot mean that one side is to be strapped to a board while the other leisurely completes discovery of all the parties and witnesses it can think of.

Despite this seemingly elementary principle of justice, the district court denied plaintiff's motion to terminate his

deposition and favored defendants over plaintiff by continuing the stay of discovery against plaintiff until the completion of plaintiff's deposition and enlarging the stay to include the depositions of plaintiff's associates as well. Later, when plaintiff was permitted to take a deposition in aid of his opposition to Cities' motion for summary judgment, the court continued to favor defendants by forcing him to wait a year and a half until the defendants completed their depositions of nonparty witnesses before he could begin. As a result, plaintiff lost at least four important Cities witnesses by death. At this point plaintiff cannot know how many important witnesses employed by other defendants also may have died during the stay.

Having already delayed plaintiff's discovery insufferably, the district court proceeded to compound its error by restricting plaintiff's discovery of Cities to the point where an effective gathering of all of the facts became impossible. First, the court limited discovery to two subjects. After the record demonstrated that attorney Hill knew nothing about either plaintiff or Iran, the court permitted additional discovery of Cities, but it again restricted the discovery, this time in such a way as to eliminate any chance of conducting a normal deposition. The district court's final restriction on plaintiff's discovery was to cut it off entirely. The court denied plaintiff's motion for the production of documents and refused to permit plaintiff to examine the other defendants, even on the limited issue of Cities' role in the conspiracy.

The error of the courts below in limiting and restricting plaintiff's discovery was compounded in this action by the fact that it was done in the context of a motion for summary judgment. As a result, not only was plaintiff pre-

vented from discovering facts for himself but he was not even allowed to test fully and properly by cross-examination the facts put forth by the defendant.

When, before an antitrust plaintiff has had an opportunity to engage in discovery, the defendant moves for summary judgment on the ground that there is no merit to the plaintiff's claim, the plaintiff will often be unable to marshal in opposition to the motion all of the evidence which supports his claim, for much of that evidence is still within the exclusive possession of the defendants. Consequently, discovery in aid of the plaintiff's opposition to the motion must be permitted or the motion must be denied. As expressed by Professor Kaplan:

> "Under rule 56(f) the adversary need not even present the proof creating the minimal doubt on the issue of fact which entitles him to a full trial; it is enough if he shows the circumstances which hamstring him in presenting that proof by affidavit in opposition to the motion." Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961-63 (II)*, 77 HARV. L. REV. 801, 826 (1964).

Recognizing the requirements of liberal discovery in antitrust actions, combined with liberal granting of rule 56(f) applications, several lower courts have concluded that summary judgment motions should be denied outright in private antitrust cases where pre-trial discovery is not complete, even where the plaintiff was unable to sustain the allegations of his complaint. *Mansfield* v. *General Artists Corp.*, 1967 TRADE CAS. ¶72,156 (S.D.N.Y. 1967); *Philco Corp.* v. *Radio Corp. of America*, 34 F.R.D. 453 (E. D. Pa. 1964); *Smith-Corona Marchant, Inc.* v. *American Photocopy Equip. Co.*, 217 F. Supp. 39 (S.D.N.Y. 1963). The

reasoning behind these decisions is plain: many times, an antitrust plaintiff will need to undertake the broadest possible discovery before he finally comes up with sufficient facts to make out his circumstantial case of conspiracy.

The general rule, as Professor Moore has summarized it, is that "The party opposing summary judgment must be given a reasonable opportunity to gain access to proof, particularly where the facts are largely within the knowledge or control of the moving party." 6 MOORE, FEDERAL PRACTICE ¶56.15[5], at 2397 (2d ed. 1966). If the purport of rule 56(e) is to place the burden of demonstrating a genuine issue as to a material fact on the party opposing summary judgment, as determined by the courts below, then the need is all the more compelling for the opposing party to have broad discovery in order to satisfy that burden.

Professor Moore states:

> "Rule 26(a) in providing that '*any party* may take the testimony of any person * * *' accords an equal right to all the parties to take depositions before trial." 4 MOORE, FEDERAL PRACTICE ¶26.06, at 1077 (2d ed. 1966) (emphasis in original).

Plaintiff was not accorded that right in his case against Cities. The right was first stayed, then limited and, finally, denied. Because the lower courts denied plaintiff his rights as a litigant and singled him out for discriminatory treatment, their judgment should be reversed.

POINT II

The lower courts erred in relieving Cities of the burden of demonstrating the absence of a genuine issue of fact on its motion for summary judgment and imposing the converse burden on plaintiff.

On any motion for summary judgment under rule 56, Fed. R. Civ. P., the moving party has the burden of positively and clearly demonstrating that there is no genuine issue of fact to be tried. *Sartor* v. *Arkansas Gas Corp.*, 321 U. S. 620, 628 (1944). All inferences must be resolved against the moving party. *United States* v. *Diebold, Inc.*, 369 U. S. 654, 655 (1962). Summarizing the basic considerations applicable to summary judgment motions, Professor Moore states:

> "All reasonable doubts touching the existence of a genuine issue as to material fact must be resolved against the party moving for summary judgment.
>
> "It is not the function of the trial court at the summary judgment hearing to resolve any genuine factual issue, including credibility; and for purposes of ruling on the motion all factual inferences are to be taken against the moving party and in favor of the opposing party, and the appellate court will do likewise in reviewing the trial court's grant of summary judgment. Discretion plays no real role in the grant of summary judgment: the grant of summary judgment must be proper under the above principles or the grant is subject to a reversal. The trial court may, however, exercise a sound discretion in denying summary judgment, appropriate to the case at hand, although the movant may have technically shouldered his burden." 6 Moore, Federal Practice ¶56.23, at 2856 (2d ed. 1966).

When the papers supporting a defendant's motion for summary judgment fail to deny the crucial allegations of the complaint, those allegations must be accepted as true. *Slagle* v. *United States*, 228 F.2d 673, 678 (5th Cir. 1956); *Woods Exploration & Prod. Co.* v. *Aluminum Co. of America*, 36 F.R.D. 107, 110 (S. D. Texas 1963); *Fiumara* v. *Texaco Inc.*, 204 F. Supp. 544, 550 (E. D. Pa. 1962), *aff'd*, 310 F.2d 737 (3d Cir. 1962); *Long Island R.R.* v. *New York Cent. R.R.*, 26 F.R.D. 145, 147 (E.D.N.Y. 1960).

In addition, since the burden is on the moving party to demonstrate the absence of any genuine issue of fact and to show that the undisputed facts entitle him to summary judgment, it follows that the moving party must specify those undisputed facts. In *Long Island R.R.* v. *New York Cent. R.R., supra*, the court, in denying defendant's motion for summary judgment, stated the proposition as follows:

> "It is true that plaintiffs have failed to specify the facts which they contend to be in dispute, but the burden is upon the moving party to establish the facts with respect to which there is no dispute and not upon the other party to establish the facts that are in dispute. In other words, the defendant upon this motion has the burden of establishing the negative, and the plaintiffs do not have the burden of establishing the affirmative." 26 F.R.D. at 147.

Cities has never denied, by pleading or affidavit, the allegations of conspiracy set forth in the complaint. Instead, it submitted an affidavit by Hill, an attorney, who had knowledge of the Cities-Gulf contract for Kuwait oil and Cities' opportunity to participate in the Consortium but who was admittedly unfamiliar with Cities' Iranian venture and its

dealings with plaintiff. Hill's affidavits and the accompanying documents attempted to establish that neither Kuwait nor the Consortium were payoffs for joining the conspiracy (Tr. Vol. II, 146-411a). Hill never denied that Cities had joined the conspiracy, nor has any other officer of Cities ever filed an affidavit containing such a denial (*ibid.*). From 1960, when Cities moved for summary judgment, until his death in 1962, Jones, the one Cities executive who had personal knowledge of everything Cities did with respect to Iran, submitted no affidavit denying Cities' part in the conspiracy. He submitted no affidavit on any issue in the case, and plaintiff's attempts to depose him were tenaciously and successfully opposed by Cities.

Effective July 1, 1963, rule 56(e) was amended to add the following two sentences:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

The notes of the Advisory Committee, *Report of Proposed Amendments to Certain Rules of Civil Procedure for the United States District Courts*, 31 F.R.D. 621, 648 (1962), which recommended this change, explained that the purpose of the amendment was to overturn a line of cases in the Third Circuit in which properly documented motions for summary judgment were denied when an issue of fact was presented by the pleadings. The Advisory Committee's notes concluded with the statement that the amendment

was not intended "to affect the ordinary standards applicable to the summary judgment motion," and that, "Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied *even if no opposing evidentiary matter is presented.*" 31 F.R.D. at 648 (emphasis added). Thus, the Advisory Committee clearly stated its intention that the strict burden upon the moving party to establish the absence of any genuine issue as to a material fact was not to be disturbed.

Despite this clear statement of the purpose of the amendment, the language of the amendment drew a sharp dissent from Professor Moore, who expressed concern that the amendment would be more broadly construed than intended, so as to shift the burden of persuasion on a motion for summary judgment from the moving to the opposing party. MOORE'S MANUAL, FEDERAL PRACTICE AND PROCEDURE ¶17.10[3], at 1290-91 (1963).

Professor Moore's fear that the amendment would be used to alter the burden on summary judgment motions has been borne out in the present case. At the oral argument on plaintiff's motion for discovery on May 27, 1963, the court indicated that it might defer its decision at least until July, so that the proposed amendment to 56(e) would apply (R. 11802-03). The court did wait, for more than a year, until June 1964, when it used the 56(e) amendment to place the burden upon plaintiff, saying, "* * * plaintiff must—if he is to oppose successfully Cities Service's summary judgment—eventually submit 'specific facts' which 'would be admissible in evidence' [Rule 56(e)] * * *." (Tr. Vol. I, 58a.) No mention was made by the court of the fact that Cities had never, by affidavit or pleading, denied

that it had conspired against plaintiff. Instead, the court, without requiring Cities to satisfy the initial burden of demonstrating the absence of a genuine issue of fact, cast the burden upon plaintiff to show the existence of a genuine issue of fact. Moreover, while the court saddled plaintiff with this extraordinary burden it prevented him, in its order of July 9, 1964, from taking the full discovery needed to satisfy it. See pages 31-39, *supra*.

In its final opinion, that of September 8, 1965, the district court granted Cities' motion for summary judgment, finding that plaintiff had failed to meet "the new demands of Rule 56(e) * * *." (Tr. Vol. I, 10a.) The court said:

> "The crucial facts which plaintiff must produce in order to survive Cities' motion for summary judgment are evidentiary data tending to prove that Cities became a party to the alleged conspiracy." (Tr. Vol. I, 12a.)

In affirming, the court of appeals in effect adopted the position taken by the district court, shifting the burden to plaintiff, by noting:

> "After nine years* in the district court it is plain that the *plaintiff* has not established the existence of any 'genuine issue as to any material fact.'" (Tr. Vol. III, 174-75; emphasis added.)

The courts below have altered the standards to be applied to motions for summary judgment. They have ruled in effect that the 56(e) amendment shifted the burden on summary judgment motions so as to require the opposing

* The court may have thought plaintiff was conducting general discovery during this period, when, in fact, he was stayed. See p. 40, *supra*.

party to demonstrate the existence of an issue of fact and to relieve the moving party of the requirement of demonstrating the absence of an issue of fact. The result reached by the courts below plainly conflicts with that intended by the draftsmen of the amendment, who took pains to say:

> "Nor is the amendment designed to affect the ordinary standards applicable to the summary judgment motion. * * * When the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented." 31 F.R.D. at 648.

Since the amendment became effective, other circuits have continued to require the moving party to establish the lack of a genuine issue of fact before the opposing party is required to set forth evidentiary data showing the existence of such an issue. *Underwater Storage, Inc.* v. *United States Rubber Co.*, 371 F.2d 950, 953 (D. C. Cir. 1966), *cert. denied*, 386 U. S. 911 (1967); *Associated Hardware Supply Co.* v. *Big Wheel Distrib. Co.*, 355 F.2d 114, 121 (3d Cir. 1966); *Scott* v. *Great Atlantic & Pac. Tea Co.*, 338 F.2d 661, 662 (5th Cir. 1964); *Jacobson* v. *Maryland Casualty Co.*, 336 F.2d 72, 74 (8th Cir. 1964), *cert. denied*, 379 U. S. 964 (1965). In rejecting the notion that the amendment to the rule cast a greater burden on the party opposing summary judgment, the court in *Susman* v. *South Texas Package Stores Ass'n*, 33 F.R.D. 340, 347 (S. D. Tex. 1963), said:

> "Defendant-wholesalers' positions apparently are that the italicized portion of the amended rule places a greater burden on plaintiffs than did the earlier version. The Court is of the opinion that defendants read

more into the rule than was intended. The comments of the Advisory Committee *expressly deny that the changes were designed to affect the ordinary standards applicable to the summary judgment motion.*" (Emphasis in original.)

In establishing the lack of a genuine issue as to a material fact, a party moving for summary judgment is subject to the rules of evidence. Rule 56(e), Fed. R. Civ. P. The failure to produce evidence which is in the control of the party failing to produce it leads to the "natural inference" that he is afraid of what the evidence will show, II WIGMORE ON EVIDENCE §285, at 162 (3d ed. 1940), and the same rule applies to witnesses, *id.* at §286.

The courts have recognized the applicability of these inferences to antitrust cases. The failure to produce at trial a witness "* * * who knew, or was in a position to know, whether in fact an agreement had been reached * * *," *Interstate Circuit, Inc.* v. *United States,* 306 U. S. 208, 225 (1939), has lead to the rejection of a defense that there was no conspiracy. In *Interstate Circuit* the defendants attempted to prove the absence of concerted action by producing people at a secondary level unfamiliar with the facts. These people could safely testify because they knew little or nothing. Affirming a finding of violations of the Sherman Act in such circumstances, Mr. Justice Stone declared:

"The failure under the circumstances to call as witnesses those officers who did have authority to act for the distributors and who were in a position to know whether they had acted in pursuance of agreement is itself persuasive that their testimony, if given, would have been unfavorable to appellants. The pro-

duction of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse. *Clifton* v. *United States*, 4 How. 242, 247. Silence then becomes evidence of the most convincing character." 306 U. S. at 226.

The present case, a private treble-damage antitrust action, is a classic example of the impropriety of placing the burden of proof upon the party opposing summary judgment. By failing to deny the allegation of conspiracy and taking issue only with plaintiff's allegations as to the precise inducements for its joining the conspiracy, Cities was able to avoid submitting the affidavit of Jones, the only man in its organization who knew all of the facts. If Cities had been forced to prove the absence of any material issue of fact with respect to the conspiracy, it would have had to submit an affidavit by Jones, and plaintiff's right to examine him could not then have been denied. Cities did not want Jones examined. It was still concealing the fact that Jones had conferred with Sandberg on his way to and from Iran; it was telling the court that Jones had not gone to Kuwait when, in fact, he had; and it was still covering up the fact that Jones had wrecked the aviation gasoline deal. When, finally, the court in 1964 permitted plaintiff to depose the executives who had some knowledge of Cities' Iranian plans, Jones was dead. Even then, the district court did not permit plaintiff to examine his papers. Cities was thus able to enjoy the full benefit, and plaintiff was forced to bear the consequences, of Cities' failure to produce the only man who could by affidavit or testimony deny the crucial material fact, conspiracy.

POINT III

There are genuine issues as to whether Cities joined the conspiracy.

While he did not have the burden of doing so (see Point II, *supra*), plaintiff, even without the benefit of adequate discovery, demonstrated the existence of fact issues requiring trial. For that reason, if for none other, it was error to grant summary judgment.

On the record as it now stands, there is substantial evidence that Cities formed the intent to join, and thereafter acted in furtherance of, the conspiracy to boycott Iranian oil. It is remarkable that, although the action has been pending for more than 11 years, the evidence that Cities joined the conspiracy is substantially uncontradicted. Rather than attempting to refute its participation in the conspiracy, Cities throughout the litigation has focused on the collateral, evidentiary issue of whether plaintiff has proved that Cities was paid off in Kuwait oil by the conspirators.

In June 1952, when plaintiff first met Frame and Lowe Cities owned less than one half of the production it needed; its shortage was 100,000 barrels per day. For years Cities had been searching for an independent oil supply. It had coveted Gulf's Kuwait oil fields. Through plaintiff, Cities was offered the opportunity to acquire an independent oil supply, available at a cost as low as any in the world and fully capable of meeting Cities' requirements and more. Hence, Cities was attracted to that

opportunity by the strongest possible self-interest and admits it: "We didn't know anywhere else in the world that the prospects looked that bright to us." (R. 10578.)

At the very outset of its negotiations with plaintiff, Cities was anxious to obtain an invitation to Iran to exploit the situation there through plaintiff's contacts. Cities actually drafted the invitation which was signed by Premier Mossadegh. There was nothing vague about Cities' intentions. It proposed to enter into a management contract into which plaintiff's contract would be merged. As soon as the invitation was received, Watson prepared a memorandum outlining in detail Cities' plans for the management company. He left no doubt that Cities was to be the prime mover: companies already having an interest in Middle Eastern oil were to be excluded. Within a matter of weeks, Cities had mobilized its senior management in an all-out effort to pursue the opportunity plaintiff offered it. Cities' chief executive officer and the heads of Cities' production, refining and foreign departments went on an expedition to Iran, where they were given carte blanche to inspect the country's oil facilities. They were sufficiently encouraged by their prospects to make a survey of the availability of tankers to carry the oil and to prepare a report intended for Premier Mossadegh suggesting two alternatives for reactivation of the Iranian oil industry, both of which opened the door for a major role for Cities. At a news conference just before leaving Tehran on September 18, 1952, Jones was confident of Cities' prospects. Whetsel recommended that Cities should help Iran follow the example set by Mexico in the nationalization of the Mexican

oil industry and "start the long, slow process of building up new markets." (R. 10429-30.)

In spite of its demonstrated interest and the feasibility of the project, Cities walked away from the deal. There is ample evidence from which the trier of the facts could infer that Cities' action, which contravened its apparent self-interest, was taken pursuant to an unlawful agreement. On August 6, 1952, A.I.O.C. invited each "oil company of repute" to refrain from any direct or indirect participation in Iranian oil. A.I.O.C.'s invitation, which was published in a newspaper advertisement for all to read, contained a thinly veiled threat that, should any concern participate in transactions involving Iranian oil, action would be taken against it. The attitude of the cartel companies was jarringly brought home to Jones at the American Petroleum Institute convention when he was stripped of his award as oil man of the year and was taken aside and threatened with a "disastrous" loss of his oil supply (R. 6338).

In addition to the American Petroleum Institute convention, numerous other contacts or opportunities for contacts between Jones and members of the cartel occurred. Jones spent five days in Holland with Sandberg who, Watson was quick to admit, had a connection with cartel member Royal Dutch/Shell. In deepest secrecy, Jones took a trip, hastily arranged by Watson after Jones had left for Iran, to Kuwait where the oil company is owned by cartel members A.I.O.C. and Gulf. Finally, Cities was in constant contact with Gulf during negotiations of the contract to purchase oil from Gulf, culminating in a personal conference between Jones and Gulf's chairman, Drake, when

Jones obtained a most-favored-nations clause for Cities on the eve of the execution of the contract.

A common purpose and plan may be inferred from a development and collocation of circumstances. *Glasser* v. *United States*, 315 U. S. 60, 80 (1942); see also, *Continental Ore Co.* v. *Union Carbide & Carbon Corp.*, 370 U. S. 690, 698-99 (1962); *United States* v. *Patten*, 226 U. S. 525, 544 (1913).

In *Interstate Circuit, Inc.* v. *United States*, 306 U. S. 208 (1939), exhibitors of motion pictures had invited eight distributors to impose certain restrictions on the distribution of their films. The distributors argued that no conspiracy was shown inasmuch as the invitation had been addressed to each distributor individually, but this Court rejected that argument. The Court pointed out that:

> "It was enough that, knowing that concerted action was contemplated and invited, the distributors gave their adherence to the scheme and participated in it. Each distributor was advised that the others were asked to participate; each knew that cooperation was essential to successful operation of the plan." 306 U. S. at 226.

Similarly, Cities knew that concerted action was contemplated and invited—it was advertised—and gave its adherence. *Interstate Circuit*, as noted earlier, *supra*, pp. 56-57, held that the defendants' failure to call as witnesses any of their officers or agents who knew whether an agreement for concerted action had been reached was "evidence of the most convincing character" of the existence of conspiracy. 306 U. S. at 226. The same inference arises from Cities' failure to call Jones. *Cf. Poller* v. *Columbia Broadcasting System, Inc.*, 368 U. S. 464, 470 (1962), in which the Court

reversed a summary judgment for defendant on the ground, *inter alia,* that defendant's affidavits failed to negative the conspiracy.

It is, of course, immaterial whether the adherence to the illegal scheme was induced by promises or threats, such as those made to Cities by the cartel. See *Flintkote Co.* v. *Lysfjord,* 246 F.2d 368, 376 (9th Cir. 1957); *Otto Miller Co.* v. *United Dairy Farmers Co-Op Ass'n,* 261 F. Supp. 381, 385 (W. D. Pa. 1966).

Cities did more than accept the invitation to join the boycott. It acted affirmatively to conform its business behavior to that of the members of the conspiracy, and to carry out the conspiracy's objectives. The Jones report to Mossadegh was shelved. Cities refused to deal with plaintiff. Jones wrote to Secretary of State-designate Dulles stating that "the only honorable solution" was agreement with the cartel (Tr. Vol. II, 394a). He volunteered the same advice to Attorney General-designate Brownell.

Whether Cities' contract with Gulf for Kuwait oil was the result of, or was bettered or speeded by, Cities' decision to join the conspiracy or was an act in furtherance of the conspiracy will not be known until plaintiff has had full discovery of Cities and its co-conspirators. Similarly, the entire import of Jones' quashing of the aviation gasoline transaction with the Air Force, an act that furthered the objectives of the conspiracy, must also await full discovery.

Proof of conforming behavior which has the effect of promoting the alleged conspiratorial purpose creates an issue of conspiracy which must be determined by the trier of fact. *Theatre Enterprises* v. *Paramount Film Distrib.*

Corp., 346 U. S. 537 (1954). How much stronger the case for a jury where, as in the instant case, plaintiff not only shows that defendant conformed its business behavior to that of the other conspirators, contrary to its immediate self-interest, but also adduces evidence of defendant's acts in furtherance of the conspiracy, without eliciting a denial from defendant!

This Court's holding in *Theatre Enterprises* was applied by the court in *Morton Salt Co.* v. *United States*, 235 F.2d 573 (10th Cir. 1956). The court there found that the action of one of the defendants, Deseret, in refusing, after conferring with the other defendants, to deal with an outsider was against Deseret's interest "unless it [Deseret] would benefit in other ways from this yielding to the demands of competitors." 235 F.2d at 578. "The natural inference is," the court continued, "that the action was pursuant to the conspiracy and Deseret believed that the long run benefit to it by helping maintain higher price levels was greater than this loss of raw salt business." *Ibid.* The similarity with the present case is obvious: Cities would have benefited greatly from the arrangement plaintiff proposed but chose, after conferring with other conspirators, to give up its immediate advantage. The same inference that the sacrifice was made in the interest of the conspiracy must be drawn.

In *Delaware Valley Marine Supply Co.* v. *American Tobacco Co.*, 297 F.2d 199 (3d Cir. 1961), *cert. denied*, 369 U. S. 839 (1962), the court touched on the essential consideration:

> "Many of the decisions in which courts find conspiracy on the basis of circumstantial evidence do so because

> the defendants acted in apparent contradiction of their own economic self-interest. In such cases there was evidence that the plaintiff had made a better offer than did those with whom the defendant was currently doing business, or that the plaintiff's place of business was superior to that supplied by the defendant." 297 F.2d at 206.

In summary, plaintiff raised an issue of fact as to Cities' participation in the conspiracy by adducing evidence that Cities, although anxious at first to accept the opportunity offered it by plaintiff, changed its course after conferring with several of the other alleged conspirators and thereafter, in contravention of its own immediate interests in the matter and in furtherance of the announced conspiratorial purpose, refused to deal with plaintiff and used its influence to frustrate some of plaintiff's attempts to dispose of his oil to others.

Plaintiff has succeeded in developing the foregoing facts in spite of a crippling stay of discovery which, after six years, was lifted only enough to allow a brief, limited examination of one of several members of the conspiracy. The conclusion of the courts below that there are no genuine issues as to material facts to be tried in plaintiff's case against Cities is contrary to even the limited record at plaintiff's disposal and was error.

Conclusion

The judgment dismissing the complaint as to Cities should be reversed and the action should be remanded to the district court with directions to deny Cities' motion for

summary judgment and permit plaintiff to engage in discovery proceedings to the full extent permitted by the Federal Rules of Civil Procedure.

Respectfully submitted,

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APPENDIX A

Rule 56, Federal Rules of Civil Procedure

Summary Judgment.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine

issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

SUPREME COURT, U. S.
OCT 20 19
JOHN F. DAVIS, C

IN THE

Supreme Court of the United States

October Term, 1967

No. 23

PATRICIA WALDRON, as Executrix of the Last Will and Testament of GERALD B. WALDRON, Deceased,

Petitioner,

—v.—

CITIES SERVICE CO.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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Certain pages have been removed from this document as they are of a confidential nature and fall within the scope of the order of William B. Herlands, U. S. District Court Judge dated December 13, 1962.

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IN THE

Supreme Court of the United States

October Term, 1967

No. 23

PATRICIA WALDRON, as Executrix of the Last Will and Testament of GERALD B. WALDRON, Deceased,

Petitioner,

—v.—

CITIES SERVICE CO.,*

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

Question Presented

Is summary judgment appropriate when a defendant demonstrates to the satisfaction of the District Court and a unanimous Court of Appeals that there are no genuine issues to be tried and the plaintiff, after extensive discovery, has failed to produce any facts to support his conclusory allegation of conspiracy?

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* Petitioner's case against defendants British Petroleum Co., Ltd., Socony Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), and Texaco, Inc. is still pending in the United States District Court for the Southern District of New York.

Statement of the Case

Petitioner's* brief asserts and relies upon the alleged fact that he has been denied discovery and has yet to receive an answer to the complaint after 11 years. These assertions require, as part of our statement of the case, a review of the chronology of the case which demonstrates that petitioner's position is unfounded and untenable in light of his own conduct.

On June 12, 1956, seven large oil companies—British Petroleum Co. (formerly Anglo-Iranian Oil Co.), Gulf, Socony Mobil, Standard Oil Co. of California and New Jersey, The Texas Co. and Cities Service Co.—were served with a sweeping antitrust complaint demanding $109 million in damages. The plaintiff was Gerald B. Waldron.

Faced with this astronomical claim, three of the defendants, Standard Oil of New Jersey, Socony and Texas, immediately noticed the deposition of plaintiff. A procedural battle immediately commenced as to whether the defendants were to answer before they took the deposition of petitioner. Indeed, petitioner, in this $109 million lawsuit, refused to grant any of the defendants an extension of time to answer or move with respect to his complaint.

Judge Weinfeld of the Southern District ordered that the deposition of petitioner should start, and that the time of the defendants to answer should be extended until thirty days after the completion of petitioner's deposition. Tr. Vol. IV, 270; R. 11045-11048.** In accordance with the

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* Plaintiff, Gerald B. Waldron, died in November, 1964. His executrix is the petitioner. In accordance with the practice adopted in petitioner's brief, we shall refer to Gerald B. Waldron and his successor in interest as "petitioner".

** Tr. Vol. refers to Transcript of Record volume and page of portions of record printed pursuant to Supreme Court Rule 26. R. refers to record page of filed but unprinted record.

then accepted practice in the Southern District, defendants having obtained priority of examination by serving a notice first, Judge Weinfeld also stayed petitioner from conducting any pretrial proceedings until five days after service of motions or answers by defendants. *Ibid.*

The deposition of petitioner commenced on September 10, 1956 and continued until July 3, 1957. Tr. Vol. IV, 271. However, only 62 days of actual testimony were taken in this almost 10-month period—an average of about 6 days a month. All the adjournments were at petitioner's request or upon his consent. R. 377, 711, 1372, 1618, 2112, 3182. To the extent that the record reveals who requested the adjournments, it was petitioner. The record reveals none requested by defendants. In any event, every adjournment and extension of time was consented to by petitioner.

On July 3, 1957, counsel for petitioner announced that he would not permit petitioner to be examined further and that he intended to move to terminate the examination. R. 4212-4213. He made no such motion, however, until six months later, on December 30, 1957. Tr. Vol. IV, 272; R. 11049-11066.

That motion was decided on February 11, 1958, when Judge Herlands, finding no evidence of bad faith, harassment or lack of diligence on the part of defendants, denied petitioner's motion to terminate the discovery. Tr. Vol. IV, 272-273; R. 11159-11163. Judge Herlands did, however, limit the further examination to be conducted by defendants by setting up a schedule limiting the number of days each defendant might examine the petitioner and his associates and Judge Herlands ordered that petitioner be stayed from discovery until the completion of the depositions so scheduled. *Ibid.*

The order provided that the petitioner's examination be resumed on March 10, 1958 (Tr. Vol. IV, 273), but it was not so resumed.

Instead, at petitioner's insistence, the deposition schedule was postponed for another six months until September 15, 1958. Tr. Vol. IV, 224..

Accordingly, two years and three months had now passed during which a grand total of 62 days of examination of petitioner had taken place—or an average of less than three days a month.

The examination resumed on September 15, 1958, and, between that date and May 31, 1962, exactly 32 days of examination of petitioner—3½ of them by defendant Cities Service—and 58 days of examination of petitioner's associates, Nelson, Bentley, Zoes and Brown were conducted. Tr. Vol. IV, 273-276. Tr. Vol. III, 119, 123.

Thus, the total discovery by the seven defendants of petitioner and his four associates in the $109 million action consumed 159 working days. This discovery might reasonably have been conducted in a period of eight months (assuming 20 working days a month) to one year (assuming 13 working days a month). By reason of the delays of petitioner and his associates, the 8-month program took 6 years to complete.

Pursuant to the order of Judge Weinfeld, the time of defendants to answer or move against the complaint expired on June 30, 1962, and petitioner would have been permitted to commence his examination 5 days thereafter. Tr. Vol. IV, 270; R 11045-11048. See Tr. Vol. IV, 254-255. Pursuant to the later and superseding order of Judge Herlands, the stay of discovery by petitioner expired when the discovery program directed by Judge Herlands was completed—May 31, 1962. Tr. Vol. IV, 272-273; R. 11159-11163; Tr. Vol. IV, 254-255.

Accordingly, petitioner was, on June 1, 1962, entitled to proceed to conduct general discovery under the Federal Rules. Petitioner did not exercise those rights. He served no notices of examination. Instead, in a rather unusual maneuver, petitioner announced his intention to move to amend his complaint, although under the Federal Rules no such motion was either necessary or appropriate. (No answer having yet been served to the complaint, petitioner was free to amend his complaint as of right. Rule 15(a), Fed. R.Civ.P.)

Nevertheless, because of the alleged intention to move to amend the complaint, petitioner again deliberately postponed any general pretrial discovery to be conducted on his part. On May 31, 1962, he stipulated that on or before July 31, 1962 he would move to amend his complaint (although such motion was unnecessary), and that the motion would be returnable on September 24, 1962. Tr. Vol. IV, 256-258. The stipulation specifically extended the time of the defendants to answer or move, and thus if Judge Weinfeld's order was not superseded by Judge Herlands', this stipulation further extended the time during which the stay of petitioner's discovery contained in the order of Judge Weinfeld remained in effect. *Id.* at 257. If, as we believe, Judge Herlands' order superseded Judge Weinfeld's, the stay of discovery by petitioner had already expired. Either way, petitioner's failure to proceed with discovery was voluntary—not compelled.

No explanation has yet been given why this motion to amend the complaint was made, why the stipulation was entered, or why petitioner did not proceed with depositions.

Compounding the delay, on July 2, 1962, petitioner stipulated that his program for amending his complaint would be stayed until he completed discovery in connection with Cities' summary judgment motion referred to below. Tr.

Vol. IV, 259. No explanation has been given why petitioner thus voluntarily abandoned any effort to exercise his conceded right to receive answers or to conduct pretrial discovery of other defendants.

Notwithstanding the foregoing stipulations, and notwithstanding petitioner's motion to amend the complaint, no such motion was ever argued or decided. Instead, petitioner waited another year until July 12, 1963, when—without court permission, which he did not need in any event—he finally served and filed the amended complaint which he had been talking about for over a year. Tr. Vol. IV, 279.

Promptly after serving the amended complaint, however, he stipulated to extend the defendants' time to move or answer with respect to the amended complaint for another four months, until November 1, 1963. Tr. Vol. IV, 262-265. The effect of this stipulation was again voluntarily to extend the stay contained in Judge Weinfeld's order—if it was still in effect. Petitioner's activities since May 31, 1962 had resulted in wasting another year and one half and voluntarily delaying his discovery even further.

Accordingly, although petitioner by promptly complying with the discovery order could have commenced his discovery as early as mid-1957, by reason of his stipulations, requests for adjournment, requests for delay, motions for relief to which he was entitled under the Rules without such motions, and other dilatory tactics, the time of the defendants other than Cities, to answer did not expire until November 1, 1963—more than seven years after the commencement of this action. (Cities had already moved for summary judgment.)

On November 1, 1963, defendants, other than Cities, responded to the amended complaint by moving for summary

judgment on the ground that petitioner lacked either business or property, the jurisdictional requirement for maintaining a private treble-damage action. Petitioner sought and obtained extensions of time to oppose this motion until April 16, 1964—another four and a half months. Tr. Vol. IV, 281-284.

The motion for summary judgment by defendants, other than Cities, was argued on May 21, 1964, and denied on June 23, 1964.

There have followed further stipulations of one kind or another and informal agreements which have had the effect of voluntarily extending *sine die* the time of the remaining defendants in the action to answer the amended complaint and, as of this writing, they have not yet answered. See, *e.g.*, Tr. Vol. IV, 285-289; Tr. Vol. IV, 292-294. Why, Cities does not know.

And, despite the absence of any restriction upon petitioner's right to conduct general pretrial discovery since May 31, 1962, there have been no such pretrial proceedings; petitioner has not yet deposed a single defendant or witness, other than Cities.

As for Cities, the depositions were conducted only because Cities insisted that petitioner go ahead with the examination which he had been granted.

The circumstances were these:

Pursuant to Judge Herlands' order of February 11, 1958, Cities Service was granted the right to examine petitioner for a period of 10 days. Tr. Vol. IV, 272-273; R. 11159-11163. In fact, Cities exercised the right to examine for only 3½ days and that examination was conducted on October 26, October 27, October 28 and October 29, 1959. Tr. Vol. II, 80a-143a.

Petitioner's complaint against Cities was at that time a narrow one: that Cities had joined the alleged conspiracy in August or September, 1952. The complaint asserted that Cities was bribed into joining the conspiracy by being given the opportunity to purchase crude oil from Kuwait at a low price and by being allowed to participate in the Consortium. Complaint, ¶ 10(i)(6); Tr. Vol. II, 59a-61a. According to petitioner, Kuwait was a bribe, and Consortium was a reward.

The deposition of petitioner was designed to ascertain whether he had any other basis for suing Cities. As demonstrated below, he repeatedly testified that, but for his erroneous surmises about Kuwait and Consortium, he had no "evidence that Cities Service was party to a conspiracy." Tr. Vol. II, 110a-111a, and no reason to sue Cities. See pp. 16 to 18 below.

The documentary record established beyond preadventure that Waldron was wrong when he guessed, as he did, that Kuwait was a bribe and Consortium was a reward. Accordingly, promptly after Cities' deposition of petitioner, Cities moved for summary judgment. The motion was made on April 8, 1960, and was supported by 140 documentary exhibits demonstrating beyond any question that petitioner had guessed wrong. Tr. Vol. II, 146a-411a.

This motion was heard on May 9, 1960, and was decided on March 30, 1961. Tr. Vol. IV, 274; R. 11656. In his decision, Judge Herlands found that "the naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events." Tr. Vol. I, 71a. Despite this finding, Judge Herlands felt bound by the then restrictive summary judgment rule of *Arnstein* v. *Porter,* 154 F.2d 464 (2d Cir. 1946) and adjourned Cities'

motion so that petitioner could conduct Rule 56(f) discovery on his only allegations—Kuwait and Consortium. *Ibid.*

Judge Herlands directed that Cities produce its officer and employee who had negotiated both the Kuwait contract and the Consortium, George H. Hill, Jr., for deposition on the 31st day after completion of the deposition program already scheduled. Order, May 3, 1961; Tr. Vol. I, 68a-69a.

Between the date of that order, May 3, 1961, and May 31, 1962, when the deposition program formally ended by stipulation, exactly 25 days of testimony of petitioner and his associates were taken—or less than 2 days a month.

The extraordinary patience which petitioner exhibited in permitting over a full year to be consumed by 25 days of examination was matched only by his reluctance in commencing the deposition of Cities which he was authorized to begin. By stipulation, the deposition program was concluded on May 31, 1962. Tr. Vol. IV, 254. (Absent the stipulation, the date would have been somewhat earlier, since defendants waived their right to examine the last witness.)

On July 2, 1962—the day when the Hill examination was to begin—petitioner *requested and stipulated* that his examination of Cities be adjourned from July 2, 1962 until September 10, 1962. Tr. Vol. IV, 259. The examination was further adjourned by stipulation from September 10 to October 10, 1962 (Tr. Vol. IV, 261) when it finally commenced.

After one day of deposition, however, petitioner adjourned it for another four weeks in order to give himself time to move for production of various documents. Tr. Vol. IV, 277, R. 10004.

Having secured the adjournment in order to make such a motion, petitioner failed to make the motion and Cities

itself was compelled to seek rulings "in light of plaintiff's now demonstrated desire to prolong and delay the completion of the Hill examination." Affidavit of Edward N. Costikyan, November 13, 1962. Tr. Vol. IV, 277.

Petitioner repeated his delaying tactics throughout his discovery of Cities.

Typical of the efforts of Cities to force petitioner to complete the examination were the statements made by Cities Service counsel, on an application to Judge Herlands by other defendants, for a protective order relating to certain documents sought by plaintiff:

"Judge Rifkind:

"Therefore it seems to me that we ought to be allowed to go forward and conclude this examination, if there be any further questions that Mr. Beshar wants to ask. The reason that I say that, your Honor, is—I need hardly repeat the argument that I made—the participation in this very noble party in which these tremendous corporations are involved is a very expensive sojourn for a little company like Cities Service, and since we are, in our view of it, innocent bystanders who just helped the plaintiff across the street when he was in trouble and otherwise had nothing to do with this transaction, we don't like to continue paying the extraordinary expenses involved in being a member of this very fashionable club. And I would like very much, your Honor, to conclude the Hill examination so that we can go ahead and complete the discussion of our motion for summary judgment. Transcript of Argument, November 7, 1962, p. 11, Tr. Vol. IV, 277.

"The Court: I understand from what has been said to me this afternoon that Judge Rifkind wants

to have the Hill examination go forward to its conclusion without delay. Is that right?

"MR. RIFKIND: That is exactly right." *Id.* p. 19.

Judge Rifkind also stated:

"I find myself in an utterly bewildered position, I made no motion when I came into court, your Honor. Mr. Sonnett made an application. He wanted . . . Mr. Beshar's examination of this witness [Mr. Hill] to be adjourned. The stipulation now reads that he shall go forward tomorrow unless the Court directs that he shall not, and I was urging your Honor not to say halt but to let the examination go forward tomorrow." *Id.* p. 25.

Subsequently, on the settlement of an order relating to the resumption of the Hill examination, Judge Rifkind stated to the Court in discussing the two proposed orders:

"The situation stands as follows, as it did on October 11: They wanted certain papers from us. We refused and we adjourned in order, if they so desired, to have an opportunity to get your Honor's ruling on that refusal. They did not take advantage of that opportunity, so our refusal persists.

"Now what is going to happen? Here we have lost a month and now we are going to lose another. We will go back. They will now ask for the paper. We will refuse. Then they will again go into court and ask for your Honor's direction. It seems to me that this is just a waste of time." Transcript of Argument, November 13, 1962, p. 49, Tr. Vol. IV, 277.

Despite these and other efforts to require petitioner to exercise his right to conduct depositions in order to resist Cities' motion for summary judgment, the deposition of

Mr. Hill was not completed until February 27, 1963. Tr. Vol. IV, 277.

Thereafter, Cities made every effort to bring its motion for summary judgment on for argument and to expedite a determination. During this period nothing other than his own stipulations or inactivity prevented petitioner from conducting any depositions of anybody he wanted to depose under Rule 30. His rights of discovery were restricted *only* to the extent that he sought deposition of *defendant Cities Service* pursuant to Rule 56(f) in order to resist Cities' motion for summary judgment.

In summary, by virtue of petitioner's conduct, a deposition program which would have been completed in eight months took six years. Since then, another five years have been consumed while petitioner sat by doing nothing except complaining about the orders entered in 1956 and 1957. Those orders, if they had any continuing validity after 1962, had it only because petitioner voluntarily agreed again and again to keep their restrictions against his discovery program alive.

The facts developed during these eleven years of desultory depositions have demonstrated beyond any question that petitioner has no claim against defendant Cities Service and that defendant Cities Service is entitled to and was properly granted summary judgment.

The Complaint

The complaint alleged that the defendants conspired to frustrate petitioners' efforts to sell expropriated Iranian crude oil in the United States under an alleged contract which petitioner obtained from the National Iranian Oil Company on May 25, 1952. It alleged the existence of an

oil cartel and in this respect was copied from a complaint in a civil action brought by the United States Government. *United States* v. *Standard Oil (New Jersey), et al.,* Civil Action. No. 86-27 (S.D.N.Y.). Cities was not a party defendant in the Government action nor was it charged in that action with any participation in any oil cartel.

The complaint in this case reflected Cities' separate and different status. The complaint alleged that:

1. A conspiracy in restraint of interstate and foreign commerce in oil, begun in 1928, was, in 1934, joined by all [redacted] named defendants *"except Cities Service"*. Com[redacted]t, ¶¶ 8, 9 and 10(f); Tr. Vol. II, 48a-54a.

2. Pursuant to the conspiracy, all the defendants, *other than Cities Service,* have controlled foreign production and supplies of oil, divided foreign and domestic producing and marketing territories, fixed prices, controlled available tanker facilities, and engaged in other antitrust violations. *Id.,* ¶¶ 8, 9 and 10; Tr. Vol. II, 48a-63a.

3. In May, 1951, the Iranian Government nationalized the oil properties of defendant Anglo-Iranian (now British Petroleum). *Id.,* ¶ 10(i); Tr. Vol. II, 55a-56a. According to the complaint, defendants *"other than Cities"* then agreed not to deal in Iranian oil until they could preserve the allocations established by conspiratorial agreement. *Id.,* ¶ 10(i)(2); Tr. Vol. II, 56a-58a.

4. After petitioner obtained his alleged oil contract on May 25, 1952, from the National Iranian Oil Company, petitioner claimed defendant Anglo-Iranian (now British Petroleum) threatened him and others that legal action would be taken against them if they dealt

in the nationalized oil. *Id.*, ¶ 10(i)(2); Tr. Vol. II, 56a-58a. Petitioner claimed Anglo-Iranian (British Petroleum) and other defendants *"excepting Cities"* instituted a boycott of Iranian oil in order "to force the Iranian Government to return its oil concessions, if not to Anglo-Iranian in whole, at least to the defendants jointly, *excepting Cities Service,* under such terms as would preserve the essential allocations previously agreed upon . . ." (emphasis added) *Id.*, ¶ 10(i)(2); Tr. Vol. II, 57a-58a.

5. Petitioner never sold any of the oil to which he had access under his contract, and his inability to do so was allegedly the result of a boycott. He claimed that defendants *"other than Cities Service"* (i.e., New Jersey Standard, Texas, Socal, Gulf and Socony) "refused to purchase Iranian oil from plaintiff"; threatened their "subsidiaries, agents or purchasers with being 'barred from purchasing petroleum and products owned or controlled by defendants'"; and "caused normal and customary financial services necessary to the transaction of international business to be denied to plaintiff". *Id.*, ¶ 10(i)(2), (3), (4), (5); Tr. Vol. II, 56a-59a.

6. Petitioner's efforts to market Iranian oil were finally frustrated by the entry on October 29, 1954, of defendants *other than Cities Service* (*i.e.*, Anglo-Iranian (British Petroleum), New Jersey Standard, Socal, Texas, Gulf and Socony) into a "Consortium" which divided up substantially all Iranian oil production among these defendants. *Id.*, ¶ 10(i)(9); Tr. Vol. II, 62a.

The Unusual Role of Cities as Alleged

Petitioner thus cast Cities in a unique and peripheral role. He specifically alleged that Cities had no oil interests in the Middle East prior to 1952, and that it was not a member of the alleged oil cartel. Complaint, ¶ 10(i)(6); Tr. Vol. II, 59a-60a.

In fact, petitioner pleaded that Cities, as an independent, sought to aid petitioner in his Iranian venture in the face of the alleged boycott and threats of the other defendants. Petitioner asserted that he approached Cities in July of 1952 and Cities "indicated . . . a great interest in purchasing [petitioner's] entire supply and obtaining a managerial contract for all Iranian oil exploitation and production from the Iranian Government" (*Id.*, ¶ 10(i)(6); Tr. Vol. II, 59a). In August of 1952, W. Alton Jones, then president of Cities, went with petitioner and several staff aides to Iran and inspected the oil facilities there. According to petitioner, Cities then "proposed to the National Iranian Oil Company that over a course of years Cities Service would exploit and manage the Iranian oil resources . . ." *Id.*, ¶ 10(i)(6); Tr. Vol. II, 60a.

A single subparagraph of the complaint then stated petitioner's charges against Cities. Tr. Vol. II, 60a-61a.

Petitioner's Charges Against Cities Service: Kuwait as a Bribe and Consortium as a Reward

Cities allegedly joined the alleged conspiracy for the first time "during late August or early September, 1952", when it was enticed by the alleged conspirators Gulf and Anglo-Iranian into breaking off negotiations with plaintiff concerning Iranian oil. *Id.*, ¶ 10(i)(6); Tr. Vol. II, 60a.

Petitioner asserted two reasons for Cities' alleged behavior:

First, the complaint charged that Gulf and Anglo-Iranian bought off Cities by offering it, in August or September, 1952, a long-term supply of crude oil from Kuwait at a favorable price which Cities accepted. *Id.*, ¶ 10(i)(6); Tr. Vol. II, 60a-61a. According to the complaint:

> "*At this time and by these acts* Cities Service, without the knowledge of plaintiff, entered into combination and conspiracy with the other defendants . . ." (emphasis added) *Id.*, ¶ 10(i)(6); Tr. Vol. II, 60a.

Secondly, petitioner attempted to link Cities to the alleged conspiracy by alleging that "as a further consequence of this conspiracy" Cities was allowed by the other defendants to "gain a participation" in the Iranian Oil Consortium which was entered into more than two years later by defendants other than Cities Service. *Id.*, ¶ 10(i)(6), (9); Tr. Vol. II, 61a-62a.

Waldron's Deposition

Cities' examination of the petitioner on his $109 million claim lasted only 3½ days. In the examination, petitioner repeatedly conceded that but for two alleged acts—the alleged Kuwait deal and the alleged offer to Cities of a Consortium participation—he had no complaint against Cities and would not have joined Cities as a defendant in this action. He testified:

> "Q. Do you put them [Cities Service] into the conspiracy which you allege, which you say began in 1928?
>
> A. No, sir.
>
> Q. You don't put them into this conspiracy until a very much later date, is that right?
>
> A. That's correct.

Q. And what is the later date that you pick as the date on which you said they joined this conspiracy of the other defendants?

A. The latter part of 1952 or the first part of 1953.

Q. And what is the event which you believe justifies you in saying that they joined this conspiracy?

A. The event was when they made the arrangements with Gulf Oil Corporation to take oil from Kuwait.

Q. It is that event which led you to believe that Cities Service joined the conspiracy?

A. As well as their ending up in the International Oil Consortium in Iran.

Q. That came later?

A. Yes."

* * *

"Q. The event that you know of is the making of the contract with the Gulf Oil Company?

A. Yes, sir.

Q. And that is why you put Cities Service into this complaint as a defendant; is that right?

A. That's one reason.

Q. And the other reason is the Consortium?

A. The Consortium. That's all the reasons that I know of at this time."

* * *

"Q. And of this morning you are telling me—and I assume truthfully—that the two events which you identify as causing you to name Cities Service as a defendant are the contract with Gulf and the entry into the Consortium?

A. Yes, sir."

(Deposition of Gerald B. Waldron, Tr. Vol. II, 85a-86a).

"Q. Isn't that a correct statement of affairs, that with respect to the entire conspiracy recited in sub-

divisions 8 and 9, [of the complaint] down to Kuwait, down to the making of the Kuwait contract, you have no complaint with respect to Cities Service?

A. In general, I would say that is correct, sir."

(Deposition of Gerald B. Waldron, Tr. Vol. II, 102a).

The deposition established that Cities was interested in something other than the purchase of a few cargoes of Iranian oil, which, if anything, is all petitioner had to sell. Petitioner testified:

"We learned that Cities Service Company was interested in taking over the refinery at Abadan and all of the Iranian oil installations."

* * *

"Q. Was it your impression that you generated this notion of taking over the refinery and managing the whole Iranian oil business?

A. No.

Q. You discovered that to be there when you first contacted the Cities Service people?

A. Not on the first contact with them.

Q. But shortly thereafter?

A. Some time thereafter."

(Deposition of Gerald B. Waldron; Tr. Vol. II, 80a).

* * *

"Q. Did they ever negotiate with you for the purchase of oil under your contract independent of any other relationship they might have with the Iranian supply?

A. No."

(Deposition of Gerald B. Waldron; Tr. Vol. II, 100a).

The First Episode in Cities' Motion for Summary Judgment: April 8, 1960

Petitioner's conjecture about Kuwait oil and the Consortium was wholly and totally wrong. On his deposition, petitioner testified that he joined Cities as a defendant in this colossal $109 million antitrust action on the basis of a newspaper clipping which petitioner read in *1954* which stated that a deal had earlier been consummated between Cities and Gulf on Kuwait oil and on a snatch of conversation in petitioner's presence in August or September 1952 by W. Alton Jones, then president of Cities, who allegedly stated that he had had an offer for oil from across the Gulf, presumably Kuwait, at $1.00 a barrel (Deposition of Gerald B. Waldron; Tr. Vol. II 87a-94a).

Petitioner conceded at his deposition that he had no oral or written evidence to support his allegation that Anglo-Iranian (British Petroleum) and Gulf conspired at any time to make an offer of Kuwait oil to Cities, much less that the offer was made, as alleged, in August or September, 1952 in order to buy off Cities. He was *"guessing."* He also *"guessed"* that the offer was made in August or September 1952, and he admitted Jones did not say when the offer was received (Deposition of Gerald B. Waldron; Tr. Vol. II 88a-89a).

As for the Consortium, petitioner admitted he had nothing to support his allegation—nothing in writing, no conversation. His empty response to a request for specific information was only, "The events speak for themselves"—an inference petitioner drew "from the fact that [he believed] Cities Service was offered, was permitted to purchase a participation in the Consortium." (Deposition of Gerald B. Waldron; Tr. Vol. II, 95a-96a).

Petitioner was wrong on both Kuwait and Consortium.

Kuwait

Petitioner entirely mistook the timing and nature of the Kuwait contract. The documentary evidence demolishing his speculations was overwhelming. It established that Gulf and Cities began negotiating for the purchase by Cities of Kuwait oil as early as 1948, and that the essential contract terms were buttoned up before Cities even heard of the petitioner, let alone talked to him.

Discussions began in 1948 (Tr. Vol. II, 168a-169a); price and delivery terms were reached in early 1951 (Tr. Vol. II, 181a-184a); the detailed price formula was agreed on in early 1952 and a draft of the contract which contained the essential terms embodied in the final contract, was approved by both sides in June, 1952—all before Cities had its first contact with petitioner. Tr. Vol. II 157a-160a. There was no improvement in any of the terms following petitioner's entry upon the scene. —The"most favored nation clause" referred to by petitioner (Pet. Br. pp. 20, 61) was *not* a "clause" at all but a separate letter containing a pious declaration by Gulf of what it *believed* its policy *would* be vis-a-vis Cities if Gulf sold Kuwait oil to some one else in a similar transaction at a better price. R. 9914-9915, Pltf's Ex. CS-12.

Ironically, Cities' documents proved that on the very day petitioner met Cities personnel for the first time, July 8, 1952, the Operating Committee of Cities formally approved the proposed agreement (Exhibits 2-28 in Support of Cities' Motion for Summary Judgment, April 8, 1960; Tr. Vol. II, 168a-280a; Affidavit of George H. Hill, Jr. April 8, 1960; Tr. Vol. II, 154a-161a).

Consortium

Similarly, petitioner's allegation—admittedly based upon petitioner's guess—that Cities was further rewarded by the

alleged conspirators by being offered a participation in the Consortium was also destroyed by documentary evidence.

It established that Cities never became a member of the Consortium.

It further established that Cities' *opportunity* to participate was not the result of agreement with other defendants—but was the result of an invitation to participate extended to the entire oil industry by the *United States Department of State.*

Cities' application was approved by Price Waterhouse & Company, which was designated by the State Department as a "qualified and disinterested party" to pass upon the qualifications of applicants for a participation. Cities was advised of its acceptability by the State Department not the defendants. The minuscule percentage allocated to Cities—.45 of 1%—was made after intense dispute among the applicants, and after informal consultation with Mr. Herbert Hoover, Jr., the Undersecretary of State who resolved the dispute *against* the position taken by Cities. The other defendants played no role in this allocation.

Moreover, it is clear that Cities fought unsuccessfully to gain more than a minimal interest in the Consortium, and, failing in that effort, elected not to participate at all (Exhibits 29-59 in support of Cities' Motion for Summary Judgment, April 8, 1960, Tr. Vol. II, 281a-370a; Affidavit of George H. Hill, Jr., April 8, 1960, Tr. Vol. II, 161a-167a.

Judge Herlands' Opinion of March 30, 1961 on Cities' Initial Motion

Defendant Cities Service, as soon as was practicable after its 3½ day deposition of petitioner, moved for summary judgment. It relied upon the undisputed documentary evidence which demonstrated that the Kuwait transaction

long antedated anything to do with petitioner and that the Consortium was no reward to Cities.

Judge Herlands, however, felt constrained not to grant the motion but to hold it in abeyance because of the narrow construction which the Second Circuit had placed on Rule 56. Judge Herlands stated:

> "But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. This court has examined virtually every reported summary judgment decision rendered in this circuit since *Arnstein* v. *Porter,* 154 F.2d 464 (2d Cir. 1946), over one thousand in number. The rationale and philosophy of *Arnstein* v. *Porter* have not been attenuated by the subsequent course of decisions."

(Opinion, March 30, 1961, Tr. Vol. I, 71a). He observed, however:

> "1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.
>
> "2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events."

(*Id.,* Tr. Vol. I, 71a).

Judge Herlands adjourned Cities' motion for summary judgment until petitioner had an opportunity to engage in discovery under Rule 56(f). The Court noted:

> "Because plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record,

> so insubstantial, the plaintiff will not be given carte blanche authority to conduct untrammeled pre-trial proceedings. . . . The usual Federal rule permitting fishing expeditions will be curtailed. A just and workable balance will be maintained between the respective interests of the opposing parties." *Id.* 72a.

Pursuant to this opinion, Judge Herlands directed that Cities produce its employee, George H. Hill, Jr. who had been in charge of both Kuwait and Consortium for petitioner's examination. *Id.* 68a-70a.

As noted above, pp. 9 to 12, it was on defendant Cities' insistence that the deposition was finally completed. Six days of testimony were taken in the 8-month period between July 2, 1962 and February 27, 1963.

Cities' Motion for Summary Judgment, Second Episode: May 13, 1963

After Hill's deposition, Cities renewed its motion for summary judgment on May 13, 1963. At that point, petitioner had even less to go on than he did when he first filed his complaint. For, although the petitioner had conducted extensive examination of George H. Hill, Jr. of Cities, he had receded from the position he had reached in 1961, when Judge Herlands noted that "(t)he naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events." Tr. Vol. I, 71a.

In opposition to Cities' renewed motion, petitioner could not point to a single fact he had gleaned in the three years since Cities first made its motion which indicated he was entitled to a trial.

And what he had learned destroyed the "gossamer inference".

Petitioner Abandons the Kuwait and Consortium Theories

The documentation on the summary judgment motion and on the Hill deposition, and Mr. Hill's testimony, had demonstrated that petitioner was totally wrong in his guesses about Kuwait and Consortium.

Petitioner thereupon abandoned those claims. Indeed, petitioner later told the Court below, as to the Consortium:

> "[I]n fact, Cities watched with resentment when the Iranian pie was ultimately cut up [through the Consortium] by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies." Affidavit of Samuel M. Lane, September 15, 1964, p. 20; Tr. Vol. I, 146a.

And the Court below found:

> "[T]he record, as it now stands, conclusively establishes that both the Kuwait contract and participation in the consortium had no connection whatever with the course of Cities' conduct with regard to Iranian oil."

(Opinion, September 8, 1965, Tr. Vol. I, 12a.)

Petitioner's New Theory: Turnabout—Cities' Alleged Loss of Interest in Iranian Oil

In an effort to keep his case against Cities alive, petitioner invented a new theory. He asserted that in September 1952, Cities executed a 180° turn and changed its position concerning Iranian oil. According to petitioner, this complete turnabout occurred between the time W.

Alton Jones, then president of Cities, went to Iran and the time of his return to the United States. When Mr. Jones was in Iran in August and September 1952 Cities was deeply interested in Iranian oil. And, said petitioner, when Mr. Jones reached Paris on his way back from Iran, in late September 1952, he indicated that Cities was no longer interested in Iranian oil.

Petitioner asserted: although Cities had the entire Iranian oil industry in its grasp, it terminated its relations with the petitioner and dropped its interest in Iranian oil. From this alleged fact, petitioner leaped to the conclusion that this "turnabout" evidenced Cities joining the alleged conspiracy.

There is no issue whatsoever as to when this turnabout was alleged by petitioner to have taken place. His lawyer stated:

> "MR. LANE: [C]ities Service came into this conspiracy . . . at the time when Waldron and Jones parted company in Iran [September, 1952].
>
> "THE COURT: What evidence have you got or clues or leads or hearsay or anything other than speculation?
>
> "MR. LANE: . . . What I say is they [Cities and Waldron] went to this point together as opponents of the cartel, and when they reached this point Cities Service made a 180-degree turn and from that time on was in with the cartel and opposed to Waldron."
>
> (Tr. Vol. III, 109-110)
>
> "THE COURT: When you say there was a 180-degree turnabout, will you give me your before-and-after description showing me the 180-degree turn. . . ?

"MR. LANE: *I can date it.* That is all I can do. I can say that when Waldron left Iran [September 1952], Jones' mood was, if the Anglo-Iranian Oil Company doesn't like it, we will pour it down their throats. I can say that after Waldron left Iran and went to Paris [September 1952], the Jones party went to Kuwait [September 1952]. Then when the Jones party then came to Paris [September 25, 1952], they said there is billions in this, but we may have struck a dry hole.

"THE COURT: Is that when the conspiracy was joined by Cities Service, according to you?

"MR. LANE: In point of time according to us that is it."

(Tr. Vol. III, 108-109)

In his brief here, petitioner makes the same claim. Pet. Br. p. 64.

Petitioner himself never drew the inference which he now asks the Court to draw from Cities' conduct in September, 1952. Thus, after petitioner was allegedly aware of Cities' alleged loss of interest, he maintained the most cordial relations with Cities' officials, including attending a dinner party with them (Tr. Vol. II, 115a-118a), seeking compensation from them (*Id.* 122a-129a), maintaining friendly relations with them (*Id.* 133a-134a), and seeking to sell chemicals to them (*Id.* 136a-139a). Petitioner testified to a meeting with Mr. Watson of Cities in March of 1953, at which he had nothing but the most cordial feeling towards Cities. He testified:

"Q. Did you threaten to sue him? [Mr. Watson]?

A. No, sir.

Q. Did you indicate to him that if he didn't pay you you would take any kind of reprisals against him?

A. No, sir.

Q. Did any such thing cross your mind?

A. No, sir.

Q. And when you left the office, you and Nelson felt that it was a rather easy meeting?

A. Yes.

Q. You were quite pleased?

A. Yes."

(Tr. Vol. II, 128a)

In short, petitioner asked the Court below to draw an inference of conspiracy from facts which contemporaneously and *ante litem motam* failed to move petitioner to the untenable conclusion upon which he now relies.

In any event, within a year, petitioner abandoned this turnabout theory after he had successfully obtained further depositions based upon its assertion. This abandonment is discussed below. See pp. 29 to 33.

Petitioner Amends His Complaint

In addition to abandoning Kuwait and Consortium and inventing Turnabout, petitioner made a further effort to avoid summary judgment while Cities' renewed motion for summary judgment was pending. Petitioner amended his complaint and dropped his specific allegations concerning Kuwait and the Consortium. In their stead, he substituted a more vague and even less substantial claim. He alleged:

"Defendants, Anglo-Iranian, Socony, Socal, Jersey, Texas and their co-conspirators Gulf and Royal Dutch, with the aid of others, secretly threatened, induced and conspired with defendant Cities Service to break off all dealings with plaintiff and not to proceed further with its demonstrated interest in dealing in Iranian petroleum and products, including the man-

agement of certain aspects of the Iranian petroleum industry." (Amended Complaint, June 28, 1963, ¶ 13(g), p. 19; Tr. Vol. I, 80a)

In place of the two specific allegations in petitioner's original complaint, petitioner's counsel substituted a series of hypothetical questions:

> Did Cities Service conspire for some unknown consideration?
>
> Did Cities Service conspire for *no* consideration?
>
> If Cities Service did not join a conspiracy, why did Cities Service "pull out" of Iran? (Stenographer's Minutes, Argument of May 27, 1963, p. 14; Tr. Vol. II, 421a. See also Opinion, Herlands, J., June 23, 1964, pp. 40-41; Tr. Vol. I, 56a)

Judge Herlands' Opinion of June 23, 1964

On these papers, petitioner persuaded Judge Herlands not to grant Cities summary judgment, despite Cities' overwhelming demonstration, without first providing the petitioner with another opportunity to discover evidence to support his assertions.

Judge Herlands said:

> "Plaintiff contends that, in order to substantiate its claim that Cities Service was bought off and to flush out evidence as to what constituted the payoff, he must have further discovery.
>
> "Rule 56(f) motions should be liberally granted [citations omitted], especially where, as here, all of the allegedly material facts are within the exclusive knowledge of the opposing party . . .
>
> "Since plaintiff must—if he is to oppose successfully Cities Service's summary judgment—eventually

submit 'specific facts' which 'would be admissible in evidence' [Rule 56(e)], plaintiff should be given another opportunity to conduct pre-trial discovery.

"Plaintiff will be allowed to examine Burl S. Watson [the Chief Executive of Cities], A. P. Frame and J. E. Heston, all of Cities Service Co., in accordance with the order to be settled on June 30, 1964."

(Opinion, June 23, 1964, Tr. Vol. I, 56a-58a).

And so, once again, Cities' summary judgment motion was adjourned.

The second discovery order permitted the petitioner to inquire on the alleged issue of whether Cities' alleged change of position was the result of a conspiracy with other defendants. The discovery order encompassed conversations and communications during the period when, petitioner alleged, Cities' change of heart could be demonstrated—June 11, 1952 through November 1, 1952. The order granted examination concerning communications between Cities and other defendants pertaining to:

"(a) The two issues defined in the Court's Order filed May 4, 1961; [Kuwait and Consortium]

"(b) Conversations and communications, written or oral, from on or about June 11, 1952, to, on or about October 1, 1952, between defendant Cities Service Company and any other defendant pertaining to:

"(1) Waldron, Brown, Nelson, Bentley, Zoes, or Carter;

"(2) The refining, marketing, distributing, producing or managing of Iranian oil;

"(3) Plaintiff's proposed deal, contract, agreement or other arrangement with the Iranian Government;

"(4) The subject of defendant Cities Service Company's giving up, terminating, dropping or discontinuing negotiations with the Iranian Government in regard to any of the matters mentioned in item (2) *supra*."

(Order, Herlands, J., July 9, 1964; Tr. Vol. I, 18a-19a).

Examination was also ordered concerning internal communications within Cities' organization between June 11, 1952 and November 1, 1952 pertaining to all of these items. *Ibid.*

On July 27-31, 1964 petitioner deposed Burl S. Watson, the chief executive of Cities, who was familiar with all aspects of Cities' activities in Iranian oil.

On July 23-24, 1964 he deposed A. P. Frame, Cities' first Vice President who took part in the trip to Iran by Cities' officials.

On August 3-4, 1964 he deposed J. E. Heston, Cities' Manager of oil production, who had also participated in the Iranian trips.

At this point, petitioner had examined every surviving employee or officer of Cities who, he asserted, had any knowledge concerning the facts as to which petitioner claimed there was an issue.

Over 700 pages of transcript were taken and more than 140 documents were marked.

The depositions of Cities' officials and the contemporaneous writings demonstrated beyond any doubt what Cities

has maintained from the beginning of this action—that Cities' interest in Iranian oil continued after September 1952, that Cities did not have any change of heart as the petitioner alleged, and that Cities continued to search for a solution to the British-Iranian dispute long after Waldron went back to Denver—which he did in October, 1952.

Indeed, the documented record destroyed petitioner's theory that Cities became a conspirator when it had a "change of heart." For petitioner's basic premise was wrong—the documentary evidence established that Cities never had a change of heart.

Thus, the documented record is clear that, immediately after his trip, Jones reported to high State Department officials and engaged in continuing discussions with them, as well as with the Iranian Ambassador to the United States and with the United States Ambassador to Iran (Hill Supplemental Affidavit, May 20, 1960, Exhibits 65, 67, 69, 70, 77 and 80; Tr. Vol. II, 371a-374a, 383a, 385a, 388a-391a, 402a, 407a-408a). In addition to corresponding and meeting with these officials, he also wrote to Premier Mossadegh as late as July 10, 1953, conveying his suggestions for solving the vast and complex British-Iranian oil dispute (*Id.*, Exhibit 81; Tr. Vol. II, 409a-411a).

In January 1953, after the alleged "change of position," Jones sent copies of a legal opinion which he had obtained from John W. Davis, Esq. to influential members of the incoming Eisenhower administration—the Secretary of State and the Attorney General. The opinion declared that Iran was correct in its contentions in the dispute over expropriation and that the position which petitioner ascribes to the alleged conspirators was wrong (*Id.* Exhibits 72 and 73; Tr. Vol. II, 394a-398a).

Strange conduct for a co-conspirator to engage in. Nothing could have placed Cities in greater conflict with the alleged conspirators than these activities.

In addition, in November 1952, Jones had Cities furnish Iran with spare parts for the Abadan refinery (*Id.*, Exhibit 66; Tr. Vol. II, 384a). In October 1952, he had Cities' officials send technical advice to the National Iranian Oil Company to aid them in operating their refinery (*Id.*, Exhibits 60 and 62; Tr, Vol. II, 375a, 378a). In November and December 1952, Cities prepared a group of key technical personnel to go to Iran to help in reviving oil production. Plans concerning the lending of such technical personnel were drawn up and transmitted to the Iranian Ambassador to the United States and to Iranian officials abroad in December 1952—again after the alleged "change of position." These efforts continued until July 1953, when Cities informed Iran that the United States State Department had refused to approve the project (*Id.*, Exhibits 61, 68, 69, 74, 76, 77, 78, 79 and 80); Tr. Vol. II, 376a, 386a-387a, 388a, 399a, 401a-408a).

And there was more.

But apparently this was convincing enough to petitioner. "Change of Position" was soon to follow "Kuwait" and "Consortium," into Limbo.

Petitioner Recants Again: The Turnabout or Change of Position Claim—That Cities Lost Interest in Iran After October 1952—Is Not Only Abandoned, But Reversed

After the impact of the foregoing facts were brought home to petitioner, he abandoned "turnabout." Following all of the discovery, and in his final resistance to the motion for summary judgment, petitioner's attorney advised the Court:

> *"It does not happen to be the fact, however, that Cities lost interest in Iranian oil.* Contrary to what plaintiff was told, Jones (President of Cities) continued to take a 'keen interest' in Iranian oil, as Watson, himself, admitted; a special "Iranian room' was set up at Cities' New York office and put in the charge of a young Iranian woman who looked after the files;" [Emphasis added] (Affidavit of Samuel M. Lane, September 15, 1964; Tr. Vol. I, 146a.)

And the district court thereafter found that the evidence "demonstrates a consistent course of conduct by Cities with regard to Iranian oil at all times." Opinion, September 8, 1965, Tr. Vol. I, 12a.

Petitioner's agreement that Cities did not lose interest in Iranian oil marked the end of petitioner's last "gossamer inference." For, when the unfounded premise of Cities' change-of-heart disappeared, there was not even a shadow from which petitioner could draw a thread of conspiracy.

Change-of-heart, like the Kuwait and Consortium speculations, had led to years of fruitless and wasteful litigation. Once again, Cities had been put to the expenditure of money and time of accompanying petioner on a wild goose chase in search of a conspiracy.

Petitioner's Last Gasp: The Richfield Oil Transaction

Petitioner maintains that he attempted to sell oil to the Richfield Oil Company in the summer of 1953 (Pet. Br., pp. 20-21). These negotiations were conducted after his alleged contract giving him access to Iranian oil had expired.

In any event, petitioner asserts that Richfield's refusal to purchase oil *may have been* the result of interference by

Cities. Petitioner does not allege that it *was* the result of such interference.

Nor can he. For petitioner's suspicion as to Richfield is totally unsupported by a single fact.

Petitioner, on his deposition, admitted that at the time he drafted the complaint in 1956 he had no factual basis whatsoever to make the Richfield charge, nor did he have any factual basis to support that charge at the time of his deposition on October 26, 1959:

> "Q. I am asking you what evidence you have, written or oral, that Cities Service brought about Richfield's decision with respect to Iranian oil.
>
> A. None as yet."

Deposition of Gerald B. Waldron, Tr. Vol. II, 114a.

Nevertheless, Judge Herlands permitted the examination of Cities by its officials, Watson, Frame and Heston, on all conversations and communications from June 11, 1953 to September 30, 1953—the period specified by petitioner—between Cities and Richfield and any defendant pertaining to the negotiations between petitioner and Richfield Oil Corporation concerning the purchase of Iranian oil. Tr. Vol. I, 19a. Similarly, internal communications among Cities Service personnel, concerning the same subject matter, were ordered disclosed. *Ibid.*

Again, an empty allegation based on unfounded suspicion and on speculation without the barest factual support, led to an expensive and extensive search for nonexistent evidence.

fendants, cites the Hill memorandum as support for that statement. Tr. Vol. I, 146a.

4. Cities' complaints about the proposed Consortium plan and the role of the independents continued until the spring of 1955, when Cities declined to join the Consortium because the participation offered to it was so miniscule.

In light of this documentary evidence and petitioner's own admissions, his contention that *maybe* Cities induced Richfield not to deal with petitioner in the summer of 1953, thereby joining the other defendants in a conspiracy to frustrate his efforts to market Iranian oil, becomes absurd. Petitioner must assert the incredible hypothesis that, although Cities was a nonconspirator throughout the period in question, it nevertheless joined the alleged conspiracy for an instant of time in order to prevent Richfield from purchasing oil from him.

It is incredible that, in the course of Cities' admittedly single, uniform, consistent nonconspiratorial pattern of conduct, Cities, pursuant to and as part of the alleged conspiracy it opposed, quietly engaged in a little coercion on Richfield to prevent Richfield from purchasing Iranian petroleum from petitioner under an expired contract. This wild speculation is unsupported by any evidence and is rebutted by all of the available evidence. It is as irrational a basis for creating an issue of fact on a summary judgment motion as those discussed by this Court in *Griffin* v. *Griffin*, 327 U.S. 220 (1946), where this Court held that a claim bottomed solely on "unsupported suspicions" could not withstand a motion for summary judgment:

> "Only a word need be said as to petitioner's defense that the judgment was procured by fraud. Although his answer pleads his legal conclusion that the judgment is not entitled to recognition because of 'gross

fraud in its incidents, and in its procurement,' etc., etc., his answer sets up no facts showing the alleged fraud. A part of his answer and an unverified statement filed by petitioner in response to the motion for summary judgment were ordered stricken and scandalous. In these the charge of fraud is elaborated by general statements that the machinations of the New York counsel of the parties, and their racial, religious and political affiliations with the judges who have presided over the various phases of the New York litigation, have resulted in the failure of justice exemplified by the several decisions adverse to petitioner. We have examined these assertions and find that the only support for them so far as appears, is petitioner's unsupported suspicions. We find this no basis for the allegation that the judgment was procured or in some way affected by fraud, or for the contention that the offensive matter was improperly stricken". 327 U.S. at 235-236.

Cities' Motion for Summary Judgment, Third Episode: October 16, 1964

Cities renewed its motion for the third time in October, 1964. The motion was argued for the third time in February, 1965. The decision was rendered in September, 1965.

In his opinion Judge Herlands noted that Rule 56(e) had been amended since the case had begun to overcome the restrictive judicial interpretation placed on the summary judgment rule in the Second and other circuits. The 1963 amendments to the Federal Rules require specific facts or evidentiary data to be presented by a party opposing summary judgment. Judge Herlands had given the petitioner broad opportunities to discover the specific facts which he would have to submit in order successfully to oppose Cities'

overwhelming demonstration that it was entitled to summary judgment.

Judge Herlands, in granting Cities' motion, stated:

> "The single issue before the court relating to Cities' motion for summary judgment, is whether plaintiff's discovery has unearthed a 'genuine issue [of fact] for trial' where nothing had existed before but 'suspicion' and 'gossamer inference drawn from the mere sequence of events.'"
>
> (Opinion, September 8, 1965; Tr. Vol. I, 10a-11a)

Summarizing petitioner's position, Judge Herlands noted that petitioner relied on the sequence of events, claiming that an alleged "change of heart and mind" of Cities showed that Cities had joined the alleged conspiracy. *Id.*, at 11a.

Judge Herlands summarized the results of petitioner's exhaustive examination of every Cities official who had accompanied Cities' President Jones to Iran in August 1952, and all those who would be able to link Jones' activities at that time with the alleged conspiracy as follows:

> "The examinations of Watson, Frame and Heston have not produced any evidence from which a trier of fact would be permitted to infer that the Kuwait oil contract and participation by Cities in the consortium were consideration for Cities' allegedly dropping its interest in Iranian oil and joining the alleged conspiracy against plaintiff. On the contrary, the record, as it now stands, conclusively establishes that both the Kuwait contract and participation in the consortium had no connection whatever with the course of Cities' conduct with regard to Iranian oil." *Id.;* Tr. Vol. I, 11a-12a.

Judge Herlands then dealt with the heart of petitioner's revised complaint:

> "Plaintiff's major premise throughout this litigation with regard to Cities has been that, for some reason, Cities did a complete turnabout with respect to its interest in Iranian oil. Not only has the evidence thus far adduced demonstrated that the alleged turnabout was not motivated for the reasons originally advanced by plaintiff [Kuwait and consortium], but the evidence has brought into serious doubt the existence of the major premise itself—a turnabout or change in attitude. Rather, the evidence persuasively demonstrates a consistent course of conduct by Cities with regard to Iranian oil at all times." *Id.*, Tr. Vol. I, 12a.

Judge Herlands was explicit on what elements were missing from petitioner's position:

> "The crucial facts which plaintiff must produce in order to survive Cities' motion for summary judgment are evidentiary data tending to prove that Cities became a party to the alleged conspiracy. These evidentiary data have not been forthcoming. Even the 'gossamer inference' that existed in 1961 has become attenuated into nothingness as a result of the pretrial record developed during the last four years.
>
> "Plaintiff has been permitted to examine all of those persons, still living, who accompanied Jones to Iran in August, 1952, and who would be able to link Jones' activities at that time with the alleged conspiracy.
>
> "The examinations, however, have done no such thing."
>
> (*Id.*, Tr. Vol. I, 12a-13a)

The Second Circuit unanimously affirmed Judge Herlands' decision, and pointed out that petitioner had "ad-

vanced several divergent theories of his case by which he sought to link Cities Service to the alleged conspiracy." Tr. Vol. III, 175. The Court also noted that petitioner had been granted extensive discovery on several different occasions and on each of the theories which he had asserted. Finally, the Court found that "the record is barren of any facts which would support the existence of a claim against Cities Service," and concluded:

> "Despite these more than ample opportunities to develop a basis for his action, plaintiff has been unable to do so, and has failed to demonstrate the existence of any genuine issue of fact. The court quite properly denied the Rule 56(f) motion for further discovery by which plaintiff sought to engage in still another 'fishing expedition' in the hope that he could come up with some tenable cause of action." (Tr. Vol. III, 176)

Summary of Argument

The implication that petitioner has been denied general discovery and the right to receive answers from defendants for 11 years is untrue. Its suggestion furnishes no basis for reversal of the unanimous decision below. Petitioner was not denied such discovery. Nor was he denied the right to receive answers.

Rather, he voluntarily transformed an 8-month stay of his right to discovery into one lasting 6 years, and thereafter voluntarily forbore to seek general discovery or to enforce his right to receive answers. Point I *infra*.

The propriety of the granting of summary judgment to Cities Service is clear. On the undisputed documentary record presented below, petitioner had conducted full discovery by deposition and documentary production of every alleged issue of fact he asserted. Every one of those alleged

issues of fact was first demonstrated by defendant Cities and then admitted by petitioner to be non-existent. All that remained of petitioner's case below against Cities was a speculative inquiry—unsupported by a single evidentiary fact. That inquiry—Did Cities conspire?—was answered in the negative by the undisputed documentary evidence and by petitioner's admissions. Point II *infra.*

In the circumstances, it would have been a violation of the summary judgment rule to deny defendant Cities' motion for summary judgment. Point III *infra.*

And it would have been an abuse of discretion to grant petitioner further discovery under Rule 56(f). Point IV *infra.*

POINT I

Petitioner Did Not Have General Discovery or Receive an Answer in 11 Years Because of His Own Deliberate Choice.

Petitioner's brief asserts petitioner "comes to this Court 11 years after the filing of his complaint without having had any *general* discovery and without having received an answer" (Pet. Br. p. 42) (emphasis added).

This is true.

It is true, however, because petitioner:

(a) deliberately stretched defendants' 8-month discovery program—during which petitioner's discovery was stayed—into one that consumed 6 years;

(b) at the conclusion of the discovery program, stipulated that defendants need not answer his complaint;

(c) unnecessarily sought leave to amend the complaint which he had the right to amend as of course;

(d) delayed serving the amended complaint for over a year from the time it was first prepared;

(e) failed to notice a single deposition under Rules 26-37 of the Federal Rules of Civil Procedure for the past 5 years although nothing stopped him from doing so; and

(f) has made absolutely no effort to conduct a general discovery program or even to obtain answers to the amended complaint, which petitioner finally got around to serving in July, 1963, although the record indicates no obstacle to petitioner's securing answers.

In these circumstances, petitioner has no cause for complaint before this Court. He not only was responsible for an 8-month deposition program consuming 6 years, during which period his right to discovery was stayed, but when the stay expired and he was free to proceed, he did absolutely nothing to enforce the rights granted him under the Federal Rules.

Thus, when petitioner says "Rule 12, Fed. R.Civ.P., requiring defendants to answer within 20 days after the service of a summons and complaint, has been forgotten;" (Pet. Br. p. 42) he is in error. The rule was not forgotten. For a number of years after 1962, petitioner remembered it and stipulated again and again and again to extend those 20 days. In the last few years petitioner has allowed the entire case to remain in abeyance and has voluntarily taken no steps to secure answers or conduct discovery.

Certainly, this tolerance by petitioner is not evidence of harsh judicial treatment of petitioner.

Thus, when petitioner states "rules 26 through 37, permitting discovery by 'any party,' have been read to mean discovery by any party except the plaintiff in this action"

(Pet. Br. p. 42), petitioner's assertion is not supported by the record. The stay of such discovery expired on June 1, 1962 (but for petitioner's delays it would have expired in 1957), and petitioner has never made the slightest effort to exercise his rights to obtain such discovery.

Thus, when petitioner asserts "rule 1, which requires that the federal rules 'be construed to secure the just, speedy, and inexpensive determination of every action,' has been ignored" (Pet. Br. p. 42), he seeks to make capital of his own failure to invoke the rules.

These complaints by petitioner, to which we now address ourselves, do not relate to the scope of the discovery which petitioner was granted under Rule 56(f) against Cities Service. That discovery was not *general* discovery (the subject of petitioner's unhappiness), but discovery under Rule 56(f).

That Rule provides:

> "Should it appear from the affidavits of a party opposing the motion [for summary judgment] that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."

It was conceded below that petitioner was not entitled to a Rule 26 type of examination in order to resist the motion for summary judgment, but rather to a more limited one under Rule 56(f). Thus, Judge Herlands stated:

> "I believe, having read the thousands of pages of testimony and exhibits and the briefs in this matter, that

the plaintiff at this point has not presented a sufficient basis to justify the ordinary Rule 26 type of examination.

"Mr. Beshar [petitioner's counsel]: Yes, I can understand if this examination, your Honor, is in response to a motion for summary judgment, and is to enable us simply to assemble enough to satisfy ourselves that we can oppose his motion on the merits, that, therefore, it is not as broad an examination as it would be if we were just taking an ordinary pretrial examination." (Tr. Vol. III, p. 140)

We will demonstrate in Point IV below that, in light of the documentary facts of record and the admissions forced from petitioner, the scope of discovery afforded him under Rule 56(f) was far broader than he was entitled to and that it would have been a gross abuse of discretion to permit further examinations under Rule 56(f).

To the extent, however, that petitioner seeks a reversal of the decisions below on the asserted ground that he has not had an answer and has not had *general* discovery, the argument is specious.

The facts which on first impact seem startling, were deliberately created by petitioner. The lack of general discovery and the absence of answers are the result of a deliberate decision by petitioner to forego the exercise of his rights for two reasons:

First, he had hoped that the Government would proceed with its antitrust case against the other defendants (Cities Service is still not a defendant in that action) so as to provide him with the evidence he would need to make out a case—or possibly a judgment which might obviate any need for evidence as to many of his allegations.

Second, when faced with Cities' motion for summary judgment in 1960, petitioner recognized that he had no claim against Cities Service, that no examination would ever establish a claim against Cities Service, and that his best hope to defeat the motion was to be able to assert in this Court and in the Court below that he had not yet had his discovery.

The argument is a hollow one.

We challenge petitioner to explain why he has endlessly extended the time of defendants to answer, why he still has no answers, and why he has failed to conduct a single deposition as part of the "general discovery" the lack of which he bemoans.

No Court order has produced this result. Petitioner has.

POINT II

There Was No Genuine Issue of Fact to Be Tried in the Court Below.

Petitioner's brief complains at great length concerning the scope of the Rule 56(f) discovery which he was granted.

However, the question of whether the courts below abused their discretion in granting the Rule 56(f) discovery which they did grant, must turn upon the nature of the issues presented on the Rule 56 summary judgment motion.

For Rule 56(f) authorizes discovery in order to resist a pending motion. And in determining the scope of the examination to be afforded under Rule 56(f), the nature of the showing made under Rule 56 on the summary judgment motion and the alleged issues of fact claimed to exist are controlling.

We therefore turn initially to the documentary, uncontradicted record which establishes that petitioner had no claim and has no claim against Cities Service.

The statement of facts in petitioner's brief tells this Court a story which petitioner repeatedly admitted in the courts below was not true. Petitioner makes no effort to withdraw the admission on the basis of which the courts below acted, or to explain them, or even to distort them. He simply ignores them. And he would have this Court ignore them.

When the admissions made below and a few documented facts which are not and cannot be disputed, are added to the petitioner's version of the facts in this Court, the story of possible conspiracy by Cities told in the half-facts found in petitioner's brief metamorphasizes into the truth: that Cities never conspired with the other defendants or anyone as suggested (but never demonstrated) by petitioner.

Indeed, assuming every one of the factual assertions found in petitioner's brief is true for the purpose of this appeal, with the exception of one assertion, which is demonstrably false, there still remains no triable issue of fact and the courts below were clearly correct in granting Cities summary judgment.

The Demonstrably False Assertion

The demonstrably false assertion is the repeated statement ascribing to Mr. Jan Sandberg some position with the Royal Dutch Shell Company, an alleged co-conspirator, and petitioner's conclusion that two conferences between Alton Jones (Chairman of Cities' Board) and Sandberg —one on Jones' way to Iran in August, 1952, and one on his way back in September, 1952—are crucial indicators that Cities was part of the alleged conspiracy.

The assertion is repeatedly made and heavily relied upon by petitioner. Pet. Br. pp. 13, 16-17, 24, 33-34, 36-37, 57.

The Sandberg allegations are a perfect example of petitioner's attempt to contrive a spurious issue of fact to defeat summary judgment when he possesses nothing but exploded suspicions and corrected misinformation.

The Sandberg allegations are demonstrably false and were thoroughly demolished below.

The facts are these:

During the deposition of Mr. Burl S. Watson, then the Chief Executive Officer of Cities, petitioner's counsel, Mr. Beshar, told Mr. Watson and defense counsel *off the record* that he had done research and discovered that Sandberg —a substantial Cities Service stockholder—was a member of the finance committee of Royal Dutch Shell. This colloquy took place at the start of the morning session of the Watson deposition on Thursday, July 30, 1964. Thereafter, shortly after the morning session began, Mr. Beshar asked Mr. Watson the question:

> "Were you aware at the time that Mr. Sandberg was a member of the Finance Committee of Royal Dutch Shell?".

Watson's answer was, "I do not know when I became familiar with his position in Royal Dutch Shell. I know now that he has such a position or that he has had it in recent years. I cannot remember whether I knew it back in 1952 or not." Tr. Vol. II, 425a.

But it is clear that when Watson answered Beshar's question, he was merely accepting Beshar's word as to the role of Sandberg. This is confirmed by the record of Friday, July 31, 1964, where Beshar stated:

> "*I*, through some research, discovered the night before last (Wednesday) that Sandberg was a member of the finance committee of Royal Dutch Shell . . ." [emphasis supplied] Tr. Vol. II, 426a.

Beshar was completely and totally misinformed, and the record is incontrovertible in this regard. The affidavit of Simon H. Rifkind of October 16, 1964, states:

> "I am informed and believe that, in response to inquiries to the "Royal Dutch Shell" group in New York as to Mr. Sandberg's alleged relationship to those companies, Cities Service was advised that he had no such relationship at any time; and specific inquiry to Mr. Sandberg's secretary, who has been with him for many years, as to whether Mr. Sandberg has ever held any position with Royal Dutch Shell, and specifically as to whether he had been an officer, director, member of the Board or on its Financial Committee during the period 1952 through 1954, resulted in a reply, copy of which is annexed hereto as Exhibit A, stating that Mr. Sandberg has never had any such position, and specifically, that he was not an officer, director, member of the Board or Financial Committee in 1952, 1953 or 1954. In addition, I am also informed and believe that a search made by Mr. Connolly and Mr. MacMurray, of the Central Inquiry Office of Standard and Poor's, has revealed that the annual reports of Royal Dutch Petroleum Company and Shell Transport and Trading Company, Ltd. do not list Mr. Sandberg as having had any position or connection with these companies in the years 1952, 1953, 1954 or 1964." Affidavit of Simon H. Rifkind, October 16, 1964, Tr. Vol. II, 451a.

An affidavit from Mr. Sandberg himself, sworn to on October 26, 1964 in Holland, and served on November 4, 1964 stated point-blank:

> "I am not now nor have I ever been a director, officer or member of any corporate committee, or employee of the Royal Dutch Petroleum Company or The Shell Transport and Trading Company or of any of their subsidiaries or affiliates." Affidavit of Jan A. G. Sandberg, October 26, 1964; Tr. Vol. II, 459a.

Sandberg did more than deny any "formal" connection with Shell, contrary to petitioner's implication. Pet. Br. p. 13. He denied—and the publicly available records confirm his denial—that he occupied the position petitioner erroneously attributed to him—and *any* position with Shell.

Petitioner was totally in error in first making his assertion. He is now acting either in total ignorance or in bad faith in raising the issue once more. In their brief of November 4, 1964, in opposition to Cities' summary judgment motion, petitioner's attorneys stated:

> *"We do not understand how we could have been so misinformed about Sandberg's connection with the Royal Dutch Shell Group.* Obviously we cannot be expected to answer on November 4, 1964, an affidavit served on us on November 4, 1964, concerning a gentleman in Amsterdam, but we intend to look into the matter." (Emphasis added) Plaintiff's Reply to Cities Service's Submission in Support of its Motion for Summary Judgment, November 4, 1964, p. 22. Tr. Vol. II, 461a.

The summary judgment motion was not argued until February 9, 1965. Whatever the results of petitioner's research, his counsel never uttered a further word to suggest

that anything Cities or Mr. Sandberg said concerning Mr. Sandberg's nonexistent connection with Royal Dutch Shell was incorrect.

The claim was abandoned below. Hence, there was no occasion for Mr. Watson to explain the source of his misinformation (Pet. Br. p. 13)—an explanation which would only have further embarrassed petitioner's counsel. Since the facts as to the identity of the Board of Directors, officers and Finance Committee of Royal Dutch Shell and its subsidiaries are a matter of public record, the facts, if they existed, were available to petitioner. His failure to supply them, and his abandonment of this point on the final argument below, bars assertion of this alleged fact here.

In fact, there was no connection whatsoever between Sandberg and Royal Dutch Shell and petitioner knows it. This is a perfect example of a spurious and sham issue which petitioner attempted to create below and now tries to revive here.

No Rational Inference of Conspiracy by Cities Can Be Drawn on This Record

We now turn to the petitioner's version of the facts in the context of his admissions and the uncontradicted documentary evidence.

The key concessions made below and disregarded by petitioner in this Court have been referred to above in other connections. They are:

1. On November 4, 1964, after having examined Hill, Watson, Frame, Heston—every living member of the Cities Service Company who, he asserted, had any knowledge on the issues of fact he claimed existed—and after having examined every document relevant to the alleged issues of fact—petitioner solemnly advised District Judge Herlands,

in petitioner's reply to Cities' final submission in support of its motion for summary judgment:

> "Plaintiff does not claim that Jones was acting on behalf of a conspiracy when he sought the invitation, [July 1952] or when he went to Iran, [August 1952] or when he held his Teheran press conference, [September 1952] or when he wrote the conclusions to his final draft report on October 31, 1952." (Plaintiff's Reply to Cities Service's Submission in Support of its motion for Summary Judgment, November 4, 1964, p. 12; Tr. Vol. II, 460a-461a.)

2. On September 15, 1964, in resisting the third renewal of Cities' motion for summary judgment, again after all of the examinations, petitioner's attorney, dealing with the alleged turnabout claim and the Consortium-reward claim, solemnly and under oath advised Judge Herlands:

> "It does not happen to be the fact, however, that Cities lost interest in Iranian oil. Contrary to what plaintiff was told, Jones (President of Cities) continued to take a 'keen interest' in Iranian oil, as Watson, himself, admitted; a special 'Iranian room' was set up at Cities' New York office and put in the charge of a young Iranian woman who looked after the files; and, in fact, Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies (Pltf's Ex. CS-40)." (Affidavit of Samuel M. Lane, September 15, 1964; Tr. Vol. I, 146a).

These concessions were not lightly or casually given. They were given by petitioner in response to detailed demonstrations based upon undisputed documentary evi-

dence establishing that at each crucial period Cities was not a conspirator. When required to face and deal with these documented facts and the inescapable consequences of those facts, petitioner was forced to give these concessions so as to preserve a semblance of rationality to his claim.

If petitioner is to be permitted at this stage to pretend that the concessions were never given, then the whole process of pretrial discovery and refinement of issues was a waste of Cities' time and money.

To repeat the factual demonstration below which compelled these concessions is, we believe, unnecessary. The admissions and concessions are there, they are part of the record, they have not been repudiated, they have not been explained.

Nor can they be.

These concessions eliminate any conceivable issue of fact.

Thus, in his brief to this Court, petitioner asserts that in 1951 and 1952 Cities was at the mercy of the alleged oil cartel (Pet. Br. p. 8). For the purpose of this motion, we are content to be indifferent to that fact, *because petitioner admits that at that time Cities was not a conspirator.* (p. 54, *supra*).

Petitioner asserts in his brief to this Court that, commencing in 1948 and continuing through 1951, Cities was negotiating with Gulf in order to obtain oil from Kuwait (Pet. Br. p. 9). *But petitioner admits that at these times Cities was not a conspirator* (p. 54, *supra*).

Petitioner asserts in his brief that in June of 1952 petitioner and Cities officials met, and in their discussions Cities officials expressed interest in taking over the Iranian oil industry (Pet. Br. p. 9). *Petitioner admits that at this times Cities was not a conspirator.* (p. 54, *supra*).

In these discussions, according to petitioner's brief, Cities indicated a desire to receive an invitation to go to Iran and discussed compensation to petitioner for securing such an invitation (Pet. Br. p. 10). *Petitioner admits that at this time Cities was not a conspirator.* (p. 54, *supra*).

Petitioner next asserts that he went to Iran and obtained the invitation and delivered it to Cities on July 31, 1952, allegedly as part of some cloak-and-dagger type of masquerade (Pet. Br. p. 9). Whatever the truth may be as to the masquerade story, *petitioner admits that at this time Cities was not a conspirator.* (p. 54, *supra*).

Petitioner asserts that on or about August 8, 1952, Watson prepared a memorandum for Jones suggesting solutions and an approach to the Iranian problem. The document was marked "Secret" and Cities allegedly took various precautions to conceal its activities (Pet. Br. pp. 10-11). Whatever the truth of these assertions may be, *petitioner admits that at this time Cities was not a conspirator.* (p. 54, *supra*).

Petitioner's brief notes that defendant British Petroleum (then Anglo-Iranian) published advertisements in the New York Times and sent registered letters to petitioner and his associates on or about August 6, 1952 (Pet. Br. pp. 11-12). *Petitioner admits that at this time Cities was not a conspirator.* (p. 54, *supra*).

Petitioner asserts that on August 16, 1952 he flew to Iran, and Mr. Jones and his party went to Iran via Amsterdam. There, according to petitioner, Mr. Jones conferred with a Mr. Jan Sandberg—a substantial Cities stockholder. Petitioner asserts to this Court that Sandberg was a member of the Finance Committee of Shell, an alleged co-conspirator (Pet. Br. pp. 12-13), but this allegation is wholly false, as demonstrated above. Petitioner also as-

serts to this Court that the meeting with Sandberg was the first of three meetings with alleged co-conspirators (Pet. Br. pp. 13, 14, 16). Even if the allegation were true, however (which it is not), *petitioner admits that at this time Cities was not a conspirator.* (p. 54, *supra*).

While in Holland, petitioner points out in his brief, Jones sought information on tankers from Watson. He then left for Iran, arriving there on August 25, 1952, and he inspected Iranian facilities (Pet. Br. pp. 13-14). *Petitioner admits that at these times Cities was not a conspirator.* (p. 54, *supra*).

Next, Jones made what petitioner claims to have been a secret trip to Kuwait during his stay in Iran (Pet. Br. p. 14). This is claimed to have been the second meeting with the alleged co-conspirators. Petitioner taxes Cities' counsel because in one argument he erroneously asserted that the trip had not taken place. Indeed, that was counsel's information.

The significance of the furor, however, escapes us, since, again, *at the time of the alleged trip, and thereafter, petitioner admits Cities was not a conspirator* (p. 54, *supra*).

Petitioner next points out that in late September, 1952, Jones requested Watson to advise the Department of State that he, Jones, disassociated himself from a recommendation made by petitioner and his associates that the United States Government purchase Iranian oil. The documents on their face demonstrate the good faith of the head of a substantial oil company, who was in Iran after consultation with the President of the United States, who thereafter reported to the responsible Government officials the results of his trip, who did not want his name used in a scheme of which he disapproved.

But even if there were some question as to the good faith of the communication, it is of no moment in this case because petitioner admitted, after he knew about the communication and had examined thoroughly concerning it, *that at the time Jones was not a conspirator.* (p. 54, *supra*)

Next we come to the alleged turnabout. Below, it was repeatedly asserted that in late September 1952—on or about September 25 or 26—Cities told petitioner that Cities had no further interest in Iranian oil. This was Cities' "sudden turnabout".

The same contention was made in the petition for certiorari (Petition for Cert. p. 7).

That contention has now been abandoned for a second time. For, in our brief in opposition to the grant of certiorari (p. 50), we pointed out that petitioner had himself testified:

> "In view of Mr. Watson's statements [in September, 1952] and the general situation we realized that the—we felt that the thing was in *abeyance.* Mr. Watson said on several occasions they were not interested *now.* Mr. Whetsel kept telling us the situation might open up." (Deposition of Gerald B. Waldron, Tr. Vol. II, 118a) (Emphasis added)

Now petitioner has abandoned the assertion he made in obtaining certiorari, because he now contends:

> "Though Watson had put plaintiff off by telling him that Cities planned to sit and wait, Whetsel revealed to him Cities' continuing interest in Iranian oil by saying that the situation might open up. At his deposition Watson admitted, contrary to what he had told Waldron in September, 1952, that Cities was still interested in getting a concession or a long-term purchase contract in Iran." (Pet. Br., p. 18.)

Whatever the significance of these rather belated and repeated revisions of facts, they can give petitioner no comfort because after full knowledge of these facts *petitioner admitted that Cities was not a co-conspirator at this time and for some time thereafter.* (p. 54, *supra*).

Indeed, after full disclosure of the facts petitioner also admitted to the court below that the alleged turnabout never took place. Ibid.

Next, petitioner points out that Jones stopped off in Amsterdam on his way back to New York and met with Sandberg (Pet. Br. p. 16). This is the third alleged contact with an alleged conspirator. Sandberg, however, was not an agent of an alleged conspirator, as demonstrated above. In any event, in the court below, *with full knowledge of the facts, petitioner admitted that at the time of this alleged meeting Cities was not a conspirator.* (p. 54, *supra*)

Returning to the United States, Jones and his staff prepared a detailed report, the final draft of which was dated October 31, 1952. That report is summarized at length below. It sets forth the reasons why a takeover by Cities of the Iranian oil industry was not feasible. Having read the report, having examined those who prepared it, having viewed all the documents, *petitioner admitted in the court below that at the time this report*—summarizing the reasons why a Cities takeover of the Iranian oil industry was not an appropriate solution to the Iranian problem—*was prepared, Cities was not a conspirator. Ibid.*

Indeed, every alleged fact set forth at pages 4 through 18 of petitioner's brief took place at times when, *petitioner admitted in the court below, after full knowledge of the facts, Cities was not a conspirator.* (p. 54, *supra*)

And the foregoing alleged facts constitute petitioner's case but for a few peripheral assertions.

Thus, according to petitioner, Mr. Jones did not receive a gold medal from the American Petroleum Institute (Pet. Br. p. 18). For the purpose of this motion, we are indifferent to the truth of this allegation. If true, it is not evidence that Cities joined the alleged conspiracy. To the contrary, if true, one would expect that, once Cities joined the alleged conspiracy, as petitioner claims, at least its President would get the gold medal.

He never did.

Petitioner's few remaining assertions are destroyed by the undisputed documentary record which indicates that Cities maintained its nonconspiratorial course of conduct from 1952 through 1955.

Thus, Cities furnished Iran with spare parts for the Abadan refinery in November, 1952, prepared a group of key technicians to help Iranian oil production and submitted plans to the Iranian ambassador in December, 1952. Cities' efforts continued until July, 1953, when the State Department refused to approve the project. See *supra* pp. 31-32.

Indeed, on July 10, 1953, Jones was still writing to Premier Mossadegh making suggestions for solving the Anglo-Iranian oil dispute.

The undisputed record carries Cities' proof of nonconspiratorial behavior even farther.

On Februray 18, 1954, Cities was still opposing the interests of the alleged conspirators by urging the State Department not to approve the Consortium because it fostered monopoly by excluding independent oil companies from significant participation in Iranian oil. In the court below, petitioner conceded this was the case. Tr. Vol. I, 146a.

Petitioner's desperate search for behavior by Cities conforming to the aims of the alleged cartel is illustrated by

his contention that Jones' letters to Secretary of State Dulles and Attorney General Brownell in January, 1953, are evidence of conspiratorial behavior. Petitioner states: "Jones wrote to Secretary of state-designate Dulles stating that 'the only honorable solution' was agreement with the cartel" (Pet. Br. p. 62; see also Pet. Br. p. 19).

Petitioner's contention is transparently false. Jones' letters to Secretary Dulles and Attorney General Brownell enclosed the legal opinion of John W. Davis, Esq. procured by Cities. The opinion declared that Iran had the absolute right to expropriate or nationalize the alleged cartel's property; that American courts would not question the validity of expropriation; and that no recovery could be had by Anglo-Iranian oil companies against a purchaser of oil from Iran. Tr. Vol. II, 396a, 394a-398a. It is simply impossible for petitioner to claim that Cities was conforming its behavior to the alleged conspiracy by such acts—by obtaining and disseminating such an opinion from such a distinguished source.

Petitioner's remaining contentions about Kuwait and Richfield (Pet. Br. pp. 19-21) have been previously discussed. See pages 20-24, 33-40. They are wholly unsupported and were properly rejected below.

Finally, petitioner admitted below that Cities was not a member of the alleged conspiracy when, according to petitioner, the conspiracy's objects were finally achieved in the making of the Consortium. According to petitioner, "Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors . . ." (p. 54, *supra*).

In light of these undisputed facts and petitioner's admissions, it is of no moment whether Cities explained to petitioner why it did not take over the Iranian oil industry;

of whether Cities solicited Iran's invitation; or what Jones communicated, and with what motivations, concerning the proposed sale of aviation gasoline to the United States Government in September, 1952.

The same is true concerning Cities' alleged refusal to deal with petitioner in September of 1952. Whatever the motive, petitioner has conceded that, at the time of all of these events,—specifically including the only act he can point to evidencing a termination of relations with petitioner—Cities was *not* a conspirator. And the only possible issue in this case is whether any of this conduct was engaged in pursuant to the alleged conspiracy.

Petitioner has conceded it was not. He should not be permitted in this Court to rely upon inferences from a claimed state of facts which he admitted in the court below was not the true state.

What Is Left of Petitioner's Case?

Petitioner's case against Cities now boils down to a question. Petitioner asked below: "Why, after going so far [had] Cities turned aside?"

The history of this litigation has thus moved from the petitioner's *allegations* in his complaints, to petitioner's admission on his deposition that his case was based on two *conjectures*, to the present stage, where all his conjectures have been totally destroyed, and the petitioner is driven to state his case in the form of a series of *speculative inquiries*. In short, after 11 years nothing remains of petitioner's case against Cities except an inquiry: Why did Cities Service fail to take over the Iranian Oil Industry?

But even the answer to this speculative inquiry is found in the documented record. On October 31, 1952, Mr. Jones completed a proposed report to Premier Mossadegh out-

lining the problems and the proposed solutions relating to reactivating the Iranian oil industry.

Assuming, although it has not been proved, that Cities had the opportunity to take over the entire Iranian oil industry, as petitioner asserts, the reasons why it did not do so are clearly set forth—in a contemporaneous document, whose authenticity is unchallenged, prepared at a time when petitioner admits Cities was not a conspirator.

That document states *inter alia:*

"MAINTENANCE AND REPAIR MATERIAL

* * *

The problem of securing replacement and repair parts for this British-manufactured equipment from other than the British manufacturer is almost impossible of solution. An investigation has been made as to the possibilities of obtaining spare parts for the British-manufactured equipment from American manufacturers. The specific parts investigated were those included in lists obtained from Abadan during the visit to Iran. This study has shown conclusively that in the great majority of cases it would be practically impossible for American manufacturers to supply such equipment due to lack of detailed fabrication drawings, as well as to the fact that the fabricating of small quantities of special orders becomes prohibitively expensive."

(Report on Iranian Petroleum Situation, October 31, 1952, p. 7; Tr. Vol. II 6a-7a).

"It is extremely doubtful if the Abadan refinery could operate at maximum capacity, or even close thereto, for more than a very few months unless a workable mechanism is devised for the securing of

repair and replacement parts for the British-manufactured refinery equipment."

(*Id.* p. 8; Tr. Vol. II 8a).

"*Automotive Facilities*

The problem of maintaining adequate automotive transportation facilities is one of the most serious problems facing the National Iranian Oil Company at present. This is true, first, because all petroleum operations are dependent upon automotive facilities for the movement of men and materials, and secondly, even with the limited scale of today's operations, the automotive transportation facilities are being operated almost at their original capacity since the number of employees of N.I.O.C. is but little changed from what it was prior to nationalization. Since early in 1951 no new automotive equipment has been obtained by the N.I.O.C. and only a very limited amount of repair parts for the existing equipment. It was quite apparent from an observation of the various types of automotive equipment now in use that unless extensive replacements are soon secured there will be a serious collapse in the automotive transportation system." (*Id.* p. 17; Tr. Vol. II 17a).

• • •

"There are three major considerations to be resolved if the petroleum industry in Iran is to be reactivated:

"*First,* obtaining sufficient tankers, markets and marketing facilities to secure outlets for Iranian petroleum products and crude oil.

"*Second,* obtaining necessary skilled petroleum technologists and operators to supplement the present

Iranian staff for the operation of the petroleum facilities.

"*Third,* obtaining the necessary replacement and repair material to permit the operation of the existing petroleum equipment, a large proportion of which is of British manufacture.

"It is proposed to discuss the first consideration in some detail in this summary section since it is the most difficult of solution." (*Id.* p. 25; Tr. Vol. II, 25a).

* * *

"The possibility of exporting any substantial quantity of petroleum products from Iran to the Western Hemisphere in the foreseeable future would appear to be almost negligible. This is particularly true because the Abadan refinery in contradistinction to Iranian oil production is not a low-cost producer.

"The labor costs at the Abadan refinery, despite comparatively low wage rates, are from five to seven times greater than for comparable U. S. refineries, and the yield of high value products, such as gasoline, is much lower than invariably obtained by U. S. refineries. It would seem to be completely unrealistic to assume that any reactivation of the Iranian refining industry could be achieved in the foreseeable future through the exportation of refined products from Abadan to the Western Hemisphere." (*Id.* at p. 28; Tr. Vol. II, 28a.)

"A correlary part of securing outlets for Iranian petroleum is the problem of securing sufficient tankers for the movement of this oil. It is estimated that to move as much oil from Iran as was moved in 1950 to Eastern Hemisphere markets would require about 400 tankers, aggregating about 5,000,000 deadweight

tons. Table II in the appendix shows the latest available listing of the worldwide tankage fleet by countries and by tonnage. As of the present time practically all these tankers are in operation and it is probable that this tight tanker situation will continue for the next two years. While it is true that a certain number of tankers can almost always be obtained on a charter basis, it is highly improbable that anything like 5,000,000 tons of tanker capacity could be obtained to move Iranian petroleum without drawing on at least part of the fleet which, prior to nationalization, moved Iranian oil into world markets [the Anglo-Iranian fleet]. The construction of a new fleet of tankers for this purpose is possible, but it would be exceedingly expensive (possibly $800,000,000) and would require as much as five years to complete.

"Summarizing, the following reflects the views of Mr. Jones and his associates on this phase of the report:

"1. Complete reactivation of the Iranian petroleum industry in any reasonably short time will require that some arrangement be consummated through which a substantial portion of the marketing and transportation facilities utilized for Iranian oil prior to nationalization [both British] will be restored to this service.

"2. There will be little, if any, demand in the Western Hemisphere for refined products from Abadan.

"3. For the immediate foreseeable future, Abadan refinery operations cannot be increased beyond the amount needed to take care of internal Iranian demands and such markets as can be developed in Europe, Asia and Africa." (*Id.* at pp. 29-30; Tr. Vol. II, 29a-30a.)

• • •

"This fact must be recognized by all parties concerned; that the full reactivation of the Iranian oil industry within a period of five years or less can only be obtained by the consummation of some agreement between the Iranians and the British whereby the markets and the transportation and marketing facilities previously being served by and handling Iranian petroleum are returned to that service. Therefore, the development of a mutually satisfactory agreement between the Iranians and the British is the fundamental point governing the full reactivation of the oil industry of Iran." (*Id.* at p. 35; Tr. Vol. II, 35a-36a).

It is conceded that the idea of such an agreement would not then even be entertained by the Iranians.

Petitioner's description of the report of October 31, 1952 (Pet. Br. p. 17) is an incredible distortion. The report again and again makes clear that an essential pre-condition of a settlement is cooperation with the British in order to get tankers and markets. The suggestion that National Iranian Oil Company " . . . endeavor to enter into a long term agreement" with an American oil company was clearly a last and least desirable alternative in light of the pressing financial problems faced by the Iranians. Thus, the report states:

"It would appear that the restoration of the Iranian economy will require the continued operation of the Abadan refinery and, consequently, the export problem is primarily one of exporting petroleum products rather than crude oil. The possibility of exporting any substantial quantity of petroleum products from Iran to the Western Hemisphere in the foreseeable future would appear to be almost negligible.

* * *

"Since it does not appear that the exportation of either crude oil or refined products from Iran to the Western Hemisphere offers any real hope of substantially reactivating the Iranian petroleum industry, it is obvious that such reactivation will depend upon regaining those markets in the Eastern Hemisphere which were served from Iran prior to nationalization. . . ." Tr. Vol. II, 28a-29a.

See, also, Tr. Vol. II, 31a ff.

The solution to Iran's problems required substantial reactivation of the entire Iranian oil industry.

The alternative of an agreement with an American oil company was clearly a last-ditch one, to be considered only if everything else failed. It was specifically stated in the very report to be an alternative which would involve purchases of " * * * very small quantities for the immediate future". Tr. Vol. II, 37a. The report is clear that Jones did not recommend this last-ditch alternative or regard it as a solution to Iran's problems.

The report was a thorough, careful, statesmanlike review of a complex problem—not an artful cover for conspiratorial action.

And petitioner admits this. He does not claim that it is a sham. *He admits that its authors were not conspirators when they recorded these studied conclusions.* (p. 54, *supra*).

If petitioner were not so obsessed with his search for the slightest evidence of evil-doing by Cities, he would accept this admittedly nonconspiratorial summary for what it was —an honest answer to his persistent question, "Why didn't Cities do it?"

Petitioner has thus not produced any specific facts showing that there is a genuine issue for trial. Instead, he has

relied upon a speculative inquiry, in the absence of any evidence substantiating any of his previously demolished guesses. He asks "did Cities conspire"?—the ultimate conclusory question—in the face of an undisputed record which compels the conclusion that Cities never engaged in the conspiracy petitioner alleges.

Such a speculative question is totally insufficient to defeat a motion for summary judgment. There can be no doubt concerning the meaning of Rule 56(e) which states:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegation or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate shall be entered against him."

POINT III

Summary Judgment Was Properly Granted.

For many years the Second Circuit had followed a restrictive policy which differed from that of other circuits when dealing with the summary judgment rule. See, *e.g.*, *Arnstein* v. *Porter*, 154 F.2d 464 (2d Cir. 1946).

As a result of *Arnstein*, courts in the Second Circuit have tended more and more to search for issues of credibility and minor issues of fact, rather than attempting to determine whether on the documentary evidence, plaintiff or defendant simply had no case. The result has been severely to restrict the utility of the summary judgment remedy.

This tendency was recently reversed, or at least arrested, in the Second Circuit in cases such as *Dressler* v. *M. V.*

Sandpiper, 331 F.2d 130 (2d Cir. 1964); *Scolnick* v. *Lefkowitz,* 329 F.2d 716 (2d Cir. 1964); *Schwartz* v. *Associated Musicians of Greater New York, Local 802,* 340 F.2d 228 (2d Cir. 1964).

We submit that the direction which the Second Circuit is taking is correct and brings it into closer conformity with the views of other circuits and other jurisdictions concerning the proper scope of the summary judgment rule. It would, in our view, be a disservice to the principles embodied in the Federal Rules to take any action which would lead to a retrogressive construction of Rule 56.

Moreover, there is nothing unique in applying the summary judgment rule to antitrust cases. Rule 56 has previously been applied to antitrust cases, and its application approved by this Court as long ago as 1947. In *International Salt Co.* v. *United States,* 332 U.S. 392 (1947), summary judgment was affirmed by this Court where the documents clearly established that an antitrust violation had occurred. Similarly, in the case at bar, the fact of non-conspiracy is established by documentary evidence.

A. *The Record Reveals No Genuine Issue of Fact to Be Tried*

An issue of fact normally consists of two contradictory assertions about a matter of fact. Each of the matters of fact asserted by petitioner—Kuwait, Constortium, Turnabout, etc.—have been demonstrated by documentary evidence and petitioner's own admissions to have been spurious and sham. There remains solely petitioner's question—not assertion—"Did Cities Service conspire?"

This question does not create a triable issue of fact. Indeed, even if petitioner had more confidence and were to assert as a proposition of fact "Cities Service did conspire" it would be insufficient on this record to create a genuine, triable issue. Federal courts have repeatedly so held, even

before the amendment of Rule 56(e). Thus, in *Bond Distributing Co.* v. *Carling Brewing Co.*, 32 F.R.D. 409 (D.Md. 1963), *aff'd*, 325 F.2d 158 (4th Cir.), plaintiff claimed that defendant Carling had conspired with Canadian Breweries Ltd. and others to monopolize the brewing industry, and in furtherance of that conspiracy had terminated independent distributorships. The District Court granted summary judgment for defendants, which was affirmed on appeal.

The Court stated that plaintiffs had not:

> ". . . been able to point to any fact tending to prove that Bond's distributorship was terminated as a result of any conspiracy . . . Carling has filed in support of its motion for summary judgment, affidavits which show that Bond's distributorship was terminated because Carling was not satisfied with Bond's performance, and plaintiffs have offered nothing to contradict that evidence except the bare allegations in Count 4 [conspiracy count] of their complaint. That is not enough." 32 F. R. D. at 414.

In denying plaintiff's motion for further discovery and examination regarding all activities of one E. P. Taylor with respect to Canadian Breweries Ltd., the Court said:

> "Plaintiffs have utterly failed to support their original claim by any document, deposition or affidavit. Their belated effort to rely on a broader claim would not justify the Court, in permitting the proposed fishing expedition in view of the fact that, although plaintiffs have already had the benefit of (1) the entire record in the Canadian case, (2) other documents and (3) depositions, as well as (4) full answers by Taylor and Dowie to interrogatories, they are unable to point to any evidence tending to prove a conspiracy . . ." 32 F. R. D. at 414-415.

On appeal, the Fourth Circuit held that the District Court had properly granted summary judgment on the conspiracy count and had not abused its discretion in denying further discovery. 325 F. 2d at 159.

Similarly, the Third Circuit affirmed summary judgment for defendants in *Fiumara* v. *Texaco, Inc.*, 204 F. Supp. 544 (E.D. Pa. 1962), *aff'd* 310 F.2d 737 (3d Cir.) *cert. denied*, 372 U.S. 976. The District Court noted plaintiff had failed to present facts supporting the conspiracy inference which he wanted the court to draw:

> "Facts cannot be based on sheer speculation, rather than on the drawing of a logical inference. Taxin v. Food Fair Stores, Inc., 287 F.2d 448, 451 (3d Cir. (1961) [*cert. denied* 366 U.S. 930]. The vague, conclusory allegations of the Amended Complaint, when considered with the documents filed by defendants, are insufficient to create a genuine dispute concerning a material fact and, hence, do not prevent the granting of defendants' Motion For Summary Judgment." 204 F. Supp. at 554.

See also *Gold Fuel Service, Inc.* v. *Esso Standard Oil*, 195 F. Supp. 85 (D. N. J. 1961), *aff'd* 306 F.2d 61 (3rd Cir. 1962, *cert. denied* 371 U.S. 951 (1963); *United States* v. *Johns-Manville Corporation*, 245 F. Supp. 74, 79-80 (E.D. Pa. 1965) and cases cited therein; *Hoffman* v. *Herdman's Ltd.*, 41 F.R.D. 275 (S.D.N.Y. 1966); *Scolnick* v. *Lefkowitz*, 329 F.2d 716 (2nd Cir. 1964); *Miles* v. *Dickson*, 40 F.R.D. 386 (D. Ala. 1966).

The rule of these cases has been fortified by the amendment of Rule 56(e), which is discussed in detail below in response to petitioner's argument—which was not made in the courts below—asserting that the burden of proof was improperly shifted to petitioner.

B. *None of the Assertions Made by Petitioner in This Court Demonstrate the Existence of Any Triable Issue of Fact*

(i) *Cities Has Denied Every Allegation of Wrongdoing*

Petitioner claims that Cities never denied participation in the alleged conspiracy and that this must lead to reversal of summary judgment (Pet. Br. pp. 41, 51). This contention was made for the first time in this Court. It was not raised below.

This claim ignores the entire record in this case.

Cities has denied every allegation that petitioner has made charging Cities with wrongdoing.

Thus, in his complaint of June 11, 1956, petitioner alleged that co-defendants:

> "Gulf and Anglo-Iranian, during late August or early September, 1952, conspired to and did offer Cities Service and Cities Service did accept a vast long term supply of Kuwait oil at a price far below the posted International Gulf of Persia price . . . *At this time and by these acts Cities Service,* without knowledge of plaintiff, *entered into combination and conspiracy with the other defendants* and in furtherance of defendants' scheme broke off further negotiations with plaintiff and the National Iranian Oil Company and refused to enter into any contract or arrangement with reference to Iranian petroleum. As a further consequence of this conspiracy Cities Service eventually gained a participation in the Consortium Agreements relating to Iranian oil hereinafter described." (Complaint, June 11, 1956, ¶10(i)(6), Tr. Vol. II, 60a-61a) (Emphasis added).

In its summary judgment affidavits and exhibits Cities not only denied each of these allegations but established

they were false. (Affidavit of George H. Hill, Jr., April 8, 1960, and Exhibits 2-59 in support of Cities' motion for summary judgment April 8, 1960; Tr. Vol. II, 146a-370a; see also pp. 19-21; 30-33; 35-38, *supra.*) Moreover, Cities' affidavits and supporting papers repeatedly asserted that the "documented record of uncontroverted and incontrovertible facts . . . demonstate[s] that Cities Service was not a conspirator at any time." See, *e.g.*, Affidavit of Simon H. Rifkind, October 16, 1964; Tr. Vol. II, 432a. Cities also disproved the conspiracy allegation by destroying each and every one of petitioner's factual assertions on the basis of which he sought to draw an inference of conspiracy.

Petitioner never asked any of the four leading Cities officials whom he deposed for fifteen days whether Cities had entered the conspiracy. If he had been so concerned about a formal denial of the conclusory allegation of conspiracy, all petitioner needed to do was to pose a single question. Petitioner did not ask this question because Cities had already denied and disproved the conspiracy allegations in its summary judgment papers.

What petitioner seemingly is concerned with is the absence of a formal pleading denying the formal allegations. But the reason for the absence of such a paper is that defendants were granted an extension of time by Judge Weinfeld until thirty days after petitioner's deposition was completed, within which to answer the complaint. Tr. Vol. IV, 270; R. 11045-11048.

After Cities had completed its 3½ day examination of plaintiff, and while the time was thus extended, it moved for summary judgment.

Petitioner filed an amended complaint on June 28, 1963, at a time when Cities' summary judgment motion directed to his initial complaint was *sub judice.*

The reason why Cities never answered the allegations of the amended complaint was that petitioner *stipulated* in writing on July 29, 1963 that Cities need *not* answer until thirty days after the determination of Cities' summary judgment motion. Tr. Vol. IV, 263-264. Since Cities' motion was granted, Cities was never required to answer the amended complaint.

Finally, petitioner's assertion that "no mention was made by the [district] court of the fact that Cities had never, by affidavit or pleading, denied that it had conspired against plaintiff" is doubly misleading. Pet. Br. pp. 53-54.

Not only did Cities deny all of petitioner's charges of wrongdoing, but petitioner himself never raised this alleged failure to deny before the District Court or the Second Circuit.

That, of course, explains why the lower courts did not mention this.

(ii) ***The Absence of Testimony by W. Alton Jones Raises No Inference of Conspiracy: Those Who Did Testify Were Not Underlings***

Petitioner argues that Cities did not produce its President, W. Alton Jones, for examination and that this leads to the "natural inference that [they were] afraid of what the evidence will show," and was "evidence of the most convincing character of the existence of conspiracy." Pet. Br. pp. 56-57, 61.

The facts are these: W. Alton Jones died in an airplane crash on March 1, 1962. Mr. Jones died before petitioner began discovery of Cities under Rule 56(f). Had petitioner not stretched eight months of deposition into six years, he could have examined Mr. Jones before his death. Indeed, because of his dilatory conduct, petitioner did not begin

deposing Hill of Cities Service until October 1962. By then Mr. Jones was dead. On these facts, there is no more basis for petitioner's argument that an inference should be drawn against Cities by reason of its "failure to call Jones" than there would be to draw such an inference against petitioner. Pet. Br. p. 61.

Petitioner also cites *Interstate Circuit Inc.* v. *United States*, 306 U.S. 208 (1939) implying that the Cities' officials he deposed were "at a secondary level unfamiliar with the facts." Pet. Br. 56, 61. This argument is untenable. Petitioner deposed the highest Cities executives, who had direct knowledge concerning the allegations he made. Petitioner first deposed George H. Hill, Jr. then Cities' Senior Vice President in charge of Foreign Operations. Hill was the Cities official most familiar with the Kuwait oil contract and the Consortium—the only allegations made by petitioner in his original complaint against Cities. Moreover, it was Hill's affidavit that formed the basis for Cities' motion for summary judgment.

Petitioner later complained that Hill's testimony did not bear on his charge that Cities suffered an alleged change of heart. Pet. Br. pp. 27-29. But that theory was not pleaded by petitioner until after the Hill examination. Indeed, it was not until over a year after Jones had died, that petitioner invented the turnabout or change-of-heart theory and amended his complaint.

In any event, after petitioner invented his new theory, he deposed Burl S. Watson, the President and Chief Executive of Cities, for five days.

Surely Watson was no underling. Petitioner had long maintained that Watson was, with Jones, the crucial witness in this case. See, *e.g.*, Tr. Vol. III, 142. Watson was familiar with all aspects of the Iranian oil transactions

and had been second in command to Jones in 1952. Watson's examination thoroughly refuted the charge that Cities dramatically changed its position.

Petitioner further deposed J. Edgar Heston, Cities' Manager of oil production who had accompanied Jones on his Iranian trips, and Alfred P. Frame, Cities' First Vice President, who was fully familiar with the activities of Cities in Iran and who also took part in the Iranian trips with Jones.

In brief, petitioner examined top level Cities officials who were fully familiar with the facts relevant to petitioner's charges.

It was not until after Jones' death that petitioner claims to have discovered "crucial" facts as to Jones' "change of heart." He now asserts that Jones' post mortem failure to testify concerning these allegations supports a conspiracy inference. Pet. Br. pp. 33-34.

C. *The Authorities Relied Upon by Petitioner Below Were Properly Rejected Below*

Petitioner relied below primarily on *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464 (1962). He cites this decision again before this Court. Pet. Br. pp. 43, 46, 61-62. He also cites a line of anti-trust cases concerning "conscious parallelism," including the *Interstate Circuit* and *Theatre Enterprise* cases. Pet. Br. pp. 61-64. These cases are inapposite.

In *Poller*, this Court reversed a summary judgment for the defendants in a case involving a claim that the defendants conspired to eliminate plaintiff from Milwaukee broadcasting by purchasing his competitor station and cancelling his network affiliation. The Court held that on the record presented there was an issue of fact as to

whether the defendants' actions were the result of conspiracy or independent business judgment, and hence summary judgment was improper.

Petitioner asserts that Cities' position is the same as the defendants' position in *Poller* in that this case, like *Poller,* turns on the issue of motive and intent.

Petitioner is wrong. He can only maintain his contention by ignoring the documented, uncontroverted record established during the past nine and a half years.

There is no issue of motive or intent left in this case. For, petitioner's whole case is grounded on the now-demolished and now-abandoned assertion that Cities, acting as a conspirator, had a change of heart concerning Iranian oil, dropped all interest, and pursuant to the conspiracy terminated its relation with the petitioner. Petitioner can no longer make this assertion because he admitted below:

> "It does not happen to be the fact, however, that Cities lost interest in Iranian oil." (Affidavit of Samuel M. Lane, September 15, 1964; R. 11945; Tr. Vol. I, 146a.)

Accordingly, there is no genuine issue of purpose or intent to be decided in the case at bar, since the act whose purpose was alleged to have been conspiratorial—the "break-off" in advantageous negotiations with the Iranians—has, in fact, been demonstrated never to have occurred, and has been admitted by the petitioner never to have occurred. It is apparent that if the defendants in *Poller* had convincing documentary evidence and plaintiff's own admission that no loss of affiliation and no purchase of a competitor had taken place, there would then have been absolutely no issue of purpose or intent left to be decided.

Nor is that all. Petitioner's reliance on *Poller* further ignores the most basic distinction of all—that petitioner

conceded that Cities was not a conspirator at the time he asserted that Cities terminated its relation with him.

Petitioner's claims—that by September, 1952 "something had happened which turned Jones against Waldron . . . something which we mean to get at" (Pet. 2d Cir. Br. p. 36), and that when Waldron returned to the United States in *September, 1952,* he was told that Cities had no interest in Iranian oil—thus become meaningless, and, even worse, irrelevant. For these acts, critical under petitioner's speculations, took place at a time when petitioner concedes Cities was not a member of, nor acting pursuant to, any conspiracy.

The facts in the *Poller* case are not even close. In order to be a parallel situation, the plaintiff in *Poller* would have had to have conceded that CBS was not acting as a conspirator when it bought the Milwaukee station, and when it cancelled plaintiff's network affiliation. Petitioner in our case has admitted that Cities was not a conspirator when it made the business judgment whose motive petitioner questions.

Nor are these concessions and admissions the only features that distinguish this case from the *Poller* case. Rule 56(e) demands that the court pierce the pleadings to ascertain whether there are genuine issues of fact; it forces the plaintiff to produce specific facts indicating a genuine material issue. And, quite apart from the absence of the admission-of-petitioner factor, this Court in *Poller* found that "the affidavits, depositions, and exhibits indicate much more than the free exercise by CBS of the granted right of cancellation." 368 U.S. at 469. In the case at bar, however, petitioner not only cannot demonstrate that Cities did anything more than lose interest in a business venture, he now admits that the loss of interest never took place.

The conscious parallelism or "conforming behavior" cases are distinguishable on the same ground as *Poller*. There can hardly be conscious parallelism where petitioner has not established any behavior by Cities which parallels that of the alleged conspiracy. The undisputed record not only is devoid of evidence of conforming behavior but demonstrates that Cities' course of conduct consistently opposed the alleged cartel (see pages 30-33; 35-38).

Even if parallel behavior by Cities had been demonstrated, petitioner's opposition to summary judgment must still be judged insufficient. Something besides mere parallelism must be provided to create an inference of conspiracy:

> "[t]he point is that conscious parallelism is never meaningful by itself, but always assumes whatever significance it might have from additional facts. Thus, conscious parallelism is not even evidence of agreement unless there are some other facts indicating that the decisions of the alleged conspirators were *interdependent*, that the decisions were consistent with the individual self-interest of those concerned only if they all decided the same way." Turner, *The Definition of Agreement under the Sherman Act: Conscious Parallelism and Refusals to Deal*, 75 Harv. L. Rev. 655, 658 (1962). See *Theatre Enterprises, Inc.* v. *Paramount Film Distributing Corp.*, 346 U.S. 537, 540-541 (1954).

In the case at bar, not only are such other facts missing, but petitioner has conceded that Cities was not a conspirator at all crucial times. Tr. Vol. II, 461a; Tr. Vol. I, 146a. See pages 53 to 60 above.

Accordingly, neither *Poller* nor the conforming behavior antitrust cases cited by petitioner bear on the present action.

D. *Petitioner's Arguments to This Court, Which Were Not Made Below, Are Equally Untenable*

(i) *Petitioner's "Shifting of Burden" Argument Is Fictitious*

For the first time before this Court petitioner contends that the District Court and the Court of Appeals misapplied the summary judgment procedures under Rule 56 of the Federal Rules of Civil Procedure by "relieving Cities of the burden of demonstrating the absence of a genuine issue of fact on its motion for summary judgment and imposing the converse burden on plaintiff." Pet. Br. Point II, pp. 50-57.

Petitioner is fighting a strawman which he has created. It is most unlikely that the Second Circuit, which has consistently applied the most restrictive approach toward summary judgment motions, could have removed the burden of proof from the movant on a summary judgment motion, and shifted this burden to the opponent of such a motion.

And, of course, no such thing took place. Indeed, both courts below found that Cities had demonstrated that there were no triable issues of fact on the basis of Waldron's deposition, his concessions and admissions below, Cities' affidavits and the undisputed documents from Cities' files.

The claim that the District Court and the Court of Appeals revolutionized the summary judgment procedures of Rule 56 (and that their opinions thus conflict with those of every other court, Pet. Br. pp. 50-51, 55-56) is not supported or supportable by the record.

Certainly none of the opinions suggested that the burden was shifted. And to make the argument, petitioner must close his eyes (and ask this Court to close its eyes) to the

multitude of exhibits submitted to the Court below by Cities.

Indeed, since petitioner nowhere in its brief cites a single document submitted by Cities, his version of the case suggests that all Cities did was serve a naked notice of motion for summary judgment and that the courts below then turned to petitioner and required him to produce specific facts to oppose this unsupported notice.

Nothing could be further from the truth. The 461-page appendix submitted by Cities below (which is included as Volume II of the record here) represents only part of the materials produced by Cities in support of its summary judgment motion. Those documents, and excerpts from Waldron's own deposition, and Waldron's admissions were the basis upon which Cities moved for summary judgment.

And, contrary to petitioner's assertion, the District Court, far from relieving Cities of its burden, placed an unusually heavy burden upon it before it would grant summary judgment. The District Court made its position unmistakably clear:

> "THE COURT [questioning Cities' counsel on the argument of Cities' summary judgment motion]:
>
> "You claim you have gone forward and, as the movant under Rule 56 have sustained the burden in effect of eliminating every rational hypothesis of guilt?
>
> "MR. RIFKIND: Let me demonstrate that.
>
> "THE COURT: Is that what you have done?
>
> "MR. RIFKIND: Yes. I say—
>
> "THE COURT: And stated in traditional legal jargon, what you have undertaken to do is to eliminate by documentary and other record facts every rational, reasonable hypothesis of conspiracy.

"MR. RIFKIND: You have done it exactly as I would hope to be able to say it.

"THE COURT: That is what you have demonstrated?

"MR. RIFKIND: That is right."

Tr. Vol. III, 97-98.

The burden thus placed on Cities by the District Court, that of "eliminating every rational hypothesis of guilt . . . [and] of conspiracy" may have been heavier than Rule 56 requires. It certainly was no less than Rule 56 requires. It certainly shifted no burden to petitioner. Under this standard, Cities was forced to disprove hypotheses of conspiracy which even petitioner had not suggested or supported. In granting summary judgment, the District Court found that Cities had successfully carried this heavy burden.

In light of the restrictive standard expressly applied by the District Court, petitioner's contention that Cities was relieved of its burden as the movant under Rule 56 and that such burden was shifted to petitioner is untenable.

(ii) ***The Lower Courts Did Not Misconstrue Rule 56(e)***

Petitioner also maintains that the lower courts erred in their construction of the recent amendment to Rule 56(e) by "shifting the burden to petitioner." Pet. Br. pp. 54, 52-56.

Rule 56(e) was amended in 1963 by the addition of the following language:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Rule 56(e) was specifically amended in order to change the restrictive interpretations placed on that Rule by the Third and Second Circuits. Wright, Rule 56(e): A Case Study on the Need for Amending the Federal Rules, 69 Harvard Law Rev. 839, 856 (1956); *Doehler Metal Furniture Co.* v. *United States*, 149 F.2d 130, 135 (2d Cir. 1945); *Vermont Structural Slate Co.* v. *Tatko Bros. Slate Co.*, 134 F. Supp. 4, 5 (N.D. N.Y., 1955); *aff'd*, 233 F.2d 9 (2d Cir. 1956), *cert. denied* 352 U.S. 917.

The Advisory Committee on Rules noted that the provisions added to Rule 56(e) were intended

> "to overcome a line of cases, chiefly in the Third Circuit, which has impaired the utility of the summary judgment device. A typical case is as follows: A party supports his motion for summary judgment by affidavits or other evidentiary matter sufficient to show that there is no genuine issue as to a material fact. The adverse party, in opposing the motion, does not produce any evidentiary matter, or produces some but not enough to establish that there is a genuine issue for trial. Instead, the adverse party rests on averments of his pleadings which on their face present an issue. In this situation Third Circuit cases have taken the view that summary judgment must be denied, at least if the averments are 'well-pleaded,' and not supposititious, conclusory or ultimate. [citations omitted].
>
> "The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. The Third Circuit doctrine, which permits the pleadings themselves to stand in the way of granting an otherwise justified summary judgment, is incompatible with the basic purpose of the rule. See 6

Moore's Federal Practice 2069 (2d ed. 1953); 3 Barron & Holtzoff, supra, § 1235.1.

"It is hoped that the amendment will contribute to the more effective utilization of the salutary device of summary judgment.

"The amendment is not intended to derogate from the solemnity of the pleadings. Rather it recognizes that, despite the best efforts of counsel to make his pleadings accurate, they may be overwhelmingly contradicted by the proof available to his adversary." 6 *Moore's Federal Practice* ¶ 56.01[14] pp. 2021-2022 (2d ed. 1965).

Not only was the amendment aimed at the Third Circuit doctrine, but at cases in the Second Circuit as well. As the Court of Appeals for the Second Circuit noted:

"In this Circuit, for example, numerous decisions seemed to reflect a great reluctance to find that no genuine issue of fact remained for trial, and we have reversed and remanded a long line of cases in which summary judgment had been awarded below. [citing *Arnstein* v. *Porter,* 154 F.2d 464 (2d Cir. 1946) and *Kern* v. *Hettinger,* 303 F.2d 333 (2d Cir. 1962)] . . . As explained by the Advisory Committee, the recent amendments to Rule 56 were designed to overcome just such cases, which, in the words of the committee, have 'impaired the utility of the summary judgment device.'" *Dressler* v. *MV Sandpiper,* 331 F.2d 130, 132 (2d Cir. 1964).

The Advisors' comments seemed to Cities directly in point upon Cities' 1963 renewal of its motion for summary judgment and were relied upon by Cities at that time. After extensive discovery, petitioner had produced no specific facts to controvert Cities' proof that it never joined

the alleged conspiracy. Instead, he relied on the conclusory question, "Did Cities conspire?", as though that unfounded query could defeat summary judgment.

Nevertheless Judge Herlands provided petitioner with another opportunity to gather specific facts to oppose Cities' overwhelming demonstration that there was no genuine issue of fact remaining in this case. (Opinion, June 23, 1964; Tr. Vol. I, 56a-58a.)

Finally, after petitioner had completed his examination of Cities officials with regard to every issue he had raised at any time—Kuwait, Consortium, change of position, and Richfield—petitioner still could not produce any specific facts to controvert the overwhelming case established upon Cities' summary motion.

At this point, the District Court considered the policies "favoring private antitrust actions" and "protecting a plaintiff's right to his day in court" as well as the countervailing policy "against the undue harassment of a litigant through a spurious law suit." Opinion, September 8, 1965, Tr. Vol. I, 16a. Finding that Cities' overwhelming demonstration had not been refuted by the production of any facts by petitioner, despite extensive discovery, the Court finally granted Cities' motion which had been pending for five years.

The Court thus strictly, albeit correctly, construed Rule 56. Cities carried the burden of establishing the absence of genuine factual issues based upon documentary evidence proving that Cities was not a participant in any conspiracy, that the allegations in petitioner's complaint were false, and that Cities' course of conduct consistently opposed the interests of the alleged conspiracy.

Once Cities had completed this demonstration nothing could stand in the way of summary judgment unless peti-

tioner came forward with evidence tending to contradict or refute Cities' proof.

In charging that the courts below erred by shifting the burden of proof, petitioner reflects his misunderstanding of these basic propositions. Professor Kaplan dispelled such misunderstandings concerning Rule 56(e):

> "A party opposing summary judgment need not come forward in any way if the moving party has not supported his motion to the point of showing that the issue is sham. The amendment introduces no change here. [*However*] . . . *when the moving party has freshly demonstrated that his adversary's past assertions are unsupported, the adversary may be concluded if he does nothing more.*" Kaplan, Amendments of the Federal Rules of Civil Procedure, 77 Harv. L. Rev. 801, 827 (1964). (emphasis added)

Cities had demonstrated that petitioner's assertions created sham issues and were unsupported. Petitioner was then forced to do something more in order to avoid judgment in favor of Cities. Despite 5 years of adjournments of Cities' motion by the Court, during which petitioner conducted extensive discovery, he was unable to produce any facts supporting his conclusory assertions or refuting Cities' case. Summary judgment against him was properly entered at this juncture.

Petitioner quotes one sentence of Judge Herlands' District Court opinion out of context to leave the impression that petitioner had been forced to assume a burden of proof not intended by Rule 56. (Pet. Br., p. 54):

> "The crucial facts which plaintiff must produce in order to survive Cities' motion for summary judgment are evidentiary data tending to prove that Cities be-

came a party to the alleged conspiracy. These evidentiary data have not been forthcoming." Opinion, September 8, 1965, Tr. Vol. I, 12(a).

Petitioner neglects to mention the preceding paragraphs of Judge Herlands' opinion in which he carefully considered petitioner's claims purporting to link Cities with the alleged conspiracy. Tr. Vol. I, 10a-11a. As to petitioner's initial claims concerning the Kuwait oil contract and the Consortium, Judge Herlands found that:

> ". . . the record, as it now stands, conclusively establishes that both the Kuwait contract and participation in the consortium had no connection whatever with the course of Cities' conduct with regard to Iranian oil." Tr. Vol. I, 12a.

As to petitioner's major premise that Cities did a complete turnabout with respect to interest in Iranian oil, the District Court found that the evidence presented "demonstrates a consistent course of conduct by Cities with regard to Iranian oil at all times." Tr. Vol. I, 12a.

It was after these findings by the District Court—that Cities had met its burden under Rule 56 by totally destroying each and every claim by petitioner—that the District Court stated that petitioner must produce "evidentiary data tending to prove that Cities became a party to the alleged conspiracy" or else Cities was entitled to judgment. This was a perfectly proper application of standard summary judgment procedures.

The lower courts' application of Rule 56(e) in no way differs from its application by other courts. In *United States* v. *Mount Vernon Milling Co.*, 345 F.2d 404 (7th Cir. 1965), plaintiff claimed damage to a quantity of corn meal was caused by defendant. An affidavit submitted by

defendant's expert witness showed that the formation of the fungus which damaged the corn meal was totally unrelated to any misfeasance committed by defendant. The court found:

> "At this point in the proceedings, something more was required of the plaintiff beyond bare allegations and conclusions of its complaint to show the existence of an issue as to a material fact to prevent grant of a motion for summary judgment. . . . Contentions dispositive of the case were not in dispute." 345 F.2d at 405-406.

In *Miles* v. *Dickson,* 40 F.R.D. 386 (M.D. Ala. 1966), defendants filed overwhelming evidence in support of summary judgment. The Court held:

> "it became incumbent on the plaintiffs to present material facts showing that there was a genuine issue for trial. Even though counsel for plaintiffs have interrogated by deposition not only the defendants but the plaintiffs as well, they have produced no evidence that raises a genuine issue within the meaning of Rule 56." 40 F.R.D. at 389.

In *Hoffman* v. *Herdman's Ltd.,* 41 F.R.D. 275 (S.D.N.Y. 1966), the court found that the unsupported conclusory allegations of conspiracy were insufficient to defeat a fully supported summary judgment motion. The court noted that:

> "The controlling authorities in this Circuit on the summary judgment rule, sometimes referred to as "restrictive" in its application, are not without their outer limits; while the rule is to be applied cautiously so as not to deprive a party of his right to a trial where a genuine issue of facts exists, there must be a showing

that such an issue does exist, and mere conclusory allegations are not a substitute for such proof. Formal allegations which are not supported evidentially by affidavits do not raise a triable issue of fact and are insufficient to prevent the entry of summary judgment." 41 F.R.D. at 278.

See also *Moran* v. *Bench,* 353 F.2d 193 (1st Cir. 1965) *cert. denied,* 384 U.S. 906; *Washington Post Co.* v. *Keogh,* 365 F.2d 965 (D.C. Cir. 1966) *cert. denied* 385 U.S. 1011; *Beaufort Concrete Co.* v. *Atlantic States Construction Co.,* 352 F.2d 460 (5th Cir. 1965) *cert. denied,* 384 U.S. 1004; *Scolnick* v. *Lefkowitz,* 329 F.2d 716 (2d Cir. 1964); *2361 State Corp.* v. *Sealy, Inc.,* 263 F. Supp. 845 (N.D. Ill. 1967); *O'Hara* v. *Mattix,* 255 F. Supp. 540 (W.D. Mich. 1966).

In sum, far from revolutionizing the procedures under Rule 56, the lower courts correctly applied appropriate standards.

POINT IV

Petitioner's Rights to Disclosure Under Rule 56(f) Were Not Unduly or Unfairly Limited.

Petitioner's Rule 56(f) discovery was sought and obtained in order to resist Cities' motion for summary judgment. It was, accordingly, framed to meet the need asserted by petitioner, *i.e.,* to dispute the overwhelming documentary material which Cities adduced demonstrating that petitioner's charges were unfounded.

Thereafter, every Cities Service employee who was still alive (if petitioner had not stretched the eight-month discovery program into six years, he could have had his examination of Mr. Jones before the latter died) specified by petitioner was examined by petitioner as to every alleged issue of fact which petitioner claimed.

These issues of fact included:

(a) the negotiation of the Kuwait contract;

(b) the acquisition by Cities of an option to participate in the Consortium;

(c) a host of issues relating to the alleged turnabout and whether or not it took place, and, if so, whether it was the result of joining the alleged conspiracy; and

(d) the relationship, if any, between Cities and the abortive Richfield negotiations.

Having had this thorough discovery, in order, allegedly, to enable petitioner to resist the motion for summary judgment, petitioner was forced to admit that each of his prior alleged issues of fact was without foundation, and that he had no evidence to justify the claim that Cities joined the conspiracy.

Instead of seeking to demonstrate what further examination would have been appropriate, petitioner demeans the scope of the discovery which he received under Rule 56(f). His comments are either inaccurate or misleading, or both. Thus, petitioner is not correct in stating that the order was limited in time "to the period from the date when plaintiff's associates first met with Cities to a date just after the Jones entourage returned from Iran". Pet. Br. p. 31. True, petitioner was granted examination as to that period, the period during which petitioner claimed Cities' drastic change of position took place. The time limit in the order was thus created by petitioner's own claims as to the area to be explored by him. See Tr. Vol. III, 108-110; Tr. Vol. II, 417a-419a.

But petitioner was also authorized to inquire as to conversations and communications between Cities, petitioner

and all defendants from June to September, 1953, the time period when petitioner claimed Cities *may have* interfered with his potential sale of oil to the Richfield Company.

As to subject matter, petitioner maintains "the order was limited to specified items encompassing some of the relevant issues but preventing the development of others." (Pet. Br. p. 32). He fails, however, to specify these "other" issues and nowhere explains their relevancy.

Petitioner's efforts to examine into transactions unrelated to the allegations of the complaint, in which Cities hoped to engage, such as the Baluchistan concession (Pet. Br. p. 36), were properly rebuffed. Those transactions are simply not material to petitioner's case, whatever it is.

The fact that Cities maintained a central file relating to Iran called "the Iranian room" some time after November 1, 1952 is wholly irrelevant to any issue of fact between petitioner and Cities, and there is nothing to support petitioner's wild assertion that he was denied access to the documents once lodged in that room (*id.* at 34-35). Nor was he denied access to the relevant documents found in Mr. Jones' file. To the contrary, since all Cities' Iranian documents were filed in that room and since petitioner has had production of all Cities' documents within the scope of the various orders, it is clear that the assertion is wrong as well as wild. And some of the documents produced clearly came from Jones' files. The short answer is that petitioner was not denied access to relevant documents.

Petitioner's complaint that Cities relied on documents dated after November, 1952 (*id.*, pp. 34-35), while he was denied access to post-November, 1952 documents, does not warrant serious consideration. These documents were produced to counter plaintiff's now-abandoned contention that Cities had changed its position and lost interest in Iranian

oil. The documents demonstrated a consistent, nonconspiratorial, anti-monopolistic course of conduct by Cities, which petitioner now concedes was the case. See pp. 31-32; 35-38 above.

Petitioner's final assertion that the scope of the order was unduly restrictive because it was "limited to 'conversations and communications', not facts" (Pet. Br., p. 32) disregards the fact that at that stage of the proceedings he was seeking to establish that the (non-existent) turnabout was the result of Cities communications with the alleged conspirators. Ergo the inquiry into "communications and conversations".

The cases cited by petitioner in support of his claim that his discovery was unduly limited are all inapposite. All relate to other issues—the scope of Rule 26 General Discovery—the standards of proof applicable to determining whether a conspiracy exists—and the like. To the extent the cases have any pertinence they support Cities position. Indeed, Cities asks that its conduct be looked at "as a whole" (*United States* v. *Patten*, 226 U.S. 525, 544 (1913), cited at page 44 of petitioner's brief), from the beginning to the end, including the Davis opinion and the Hoover meeting and the facts conceded by petitioner to the Court below and now ignored by him.

Looking at the case "as a whole" there is nothing left of petitioner's case as to which further discovery of Cities or of the other defendants could be relevant. Petitioner now asks only: Did Cities conspire?—a conclusory question that is not a specific fact or evidentiary datum, nor even a claim. Indeed, petitioner *now* alleges in his brief to this Court "that, at a date unknown to petitioner, Cities joined the conspiracy." Pet. Br., p. 31. Petitioner, after years of discovery, cannot specify where, when, how or why this occurred or a single act evidencing that conclusion.

It is axiomatic that a deposition must be directly or indirectly germane to some issue of fact. Even under the broad Federal Rules, which permit examinations in order to find evidence, there must be some issue of fact as to which the evidence sought has a relationship.

In the case at bar, there is simply no issue of fact as to which further examination of Cities or other defendants could conceivably be pertinent.

The speculative inquiry, "Why did Cities fail to take over the Iranian oil industry?" is not an issue of fact; it is a question. And the record supplies the answer to that question.

And the question, "Did Cities Service conspire?" is again not an issue of fact but a question as to an ultimate conclusion. The answer to the question supplied by the documentary record is a clear and indisputable "No."

On this record it was not an abuse of discretion for the trial judge to refuse to grant further examinations under Rule 56(f) in order to enable petitioner to take the depositions of unnamed people employed by other defendants as to unspecified factual matters. Petitioner at no time identified a single such witness who allegedly had any knowledge or information whatsoever relevant to the issues on the summary judgment.

Rule 56(f) provides:

> "Should it appear from the affidavits of a party opposing the motion [for summary judgment] that he cannot for reasons stated present by affidavits facts essential to justify his opposition, the court *may* refuse the application for judgment or *may* order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or *may*

make such other order as is just." (Emphasis supplied)

"To obtain relief under this provision, however, the opposing party must show good reasons why he cannot present facts essential to justify his opposition." 3 Barron & Holtzoff, Federal Practice and Procedure, § 1238, p. 174.

Professor Moore, summarizing the case law, states:

"Exercising a sound discretion [under Rule 56(f)] the trial court then determines whether the stated reasons are adequate. And, absent abuse of discretion, the trial court's determination will not be interfered with by the appellate courts." 6 *Moore's Federal Practice* ¶¶ 56.24, 5615[6], pp. 2873-2874; 2429 (2d ed. 1965); See also, *e.g., Bond Distributing Co.* v. *Carling Brewing Co.*, 32 F.R.D. 409, 414-415 (D. Md. 1963), *aff'd* 325 F.2d 158, 159 (4th Cir.); *McKay* v. *American Potash & Chemical Co.*, 268 F.2d 512 (9th Cir. 1959); *Rivieri* v. *Scanlon*, 254 F. Supp. 469 (S.D.N.Y. 1966).

No basis for interfering with the lower's court's discretion has been established.

Rather, the position taken by petitioner comes down to the following: that once a complaint alleges that a defendant has become a conspirator, a plaintiff has an unlimited right of inquiry even more extensive than the right of a grand jury. That right continues at least as long as he asks the question, "Did the defendant conspire?" and as long as there may remain *possible* witnesses who *might* have information which *might* show a defendant was a co-conspirator, who have not yet been examined.

This the court below correctly refused to permit. Once every factual issue specified by petitioner was explored

by the petitioner, the District Court drew the line. We respectfully submit that to have done otherwise would have been an abuse of discretion.

The Federal Rules on discovery permit a party almost unlimited rights to seek evidence. The cost of litigation in the Federal courts has become astronomical because of the scope of pretrial proceedings permitted under the rules. To have permitted further discovery under Rule 56(f) at this point, given the state of the record, would have meant that petitioner had secured a permanent license to conduct an investigation of Cities Service merely by filing a document denominated "complaint" containing the magic word "conspire."

As Professor Moore states, an opponent of summary judgment is not entitled:

> "to have the motion denied on the mere hope that at trial he will be able to discredit movant's evidence; he must, at the hearing, be able to point out to the court something indicating the existence of a triable issue of material fact. 6 Moore, Federal Practice ¶ 56.15(4) at 2372 (2d ed. 1965).

This petitioner failed to do and still fails to do.

CONCLUSION

The summary judgment rule is particularly important in the "big case". Where an issue of fact could be tried and disposed of in a day or two, the difference between an argument for summary judgment and a trial is minimal, and the burden upon a party flowing from a determination that an issue should be tried instead of disposed of summarily is not substantial. The summary judgment rule, accordingly, has minimal impact in such a small case.

Its maximum utility is in the big case. To suggest that the remedy should not be available in a big case renders it almost meaningless. Indeed, from the point of view of judicial administration, it is in the big case where the rule makes the most sense. And in terms of avoiding unfair burdens upon a party, where the cost of litigation becomes extremely burdensome, it is the big case where summary judgment is particularly appropriate. To hold or to imply, as petitioner suggests, that the rule should not be applicable in antitrust cases (Pet. Br. p. 48) would give a plaintiff in such a case an unfair advantage and an improper weapon against a defendant.

The philosophy underlying Rule 56 has two aspects—one with respect to litigants and one with respect to the administration of justice.

With respect to the litigants: It puts into better balance the capacity of the plaintiff to inflict the lawsuit and its accompanying expenses and agonies on the defendant, and the capacity of the defendant to rid himself of this burden.

The plaintiff's capacity to inflict this burden is, by virtue of this Rule, not unlimited. When he is challenged, the plaintiff must justify his invasion of the rights of the defendant, otherwise the power to sue would be the power to punish regardless of the merits. This has become increasingly more important as the pretrial stage has grown in extent, variety and expense, and as trials have become longer and costlier. This is particularly true in an antitrust case which is the exemplar of the so-called protracted case.

From the point of view of judicial administration, it is obvious that, since the trial time of the judiciary is limited, it should be reserved for genuine and not for sham controversies. And, again, this is peculiarly true in deal-

ing with what promises to be a protracted case calling for special consideration.

A litigant who has no occasion to litigate is deprived of nothing by summary judgment except the power to waste his, his adversary's and the court's time.

The facts as applied to this case show that this petitioner's showing went through three screenings. At the end of the first screening he was able to show no claim but he made a plea for a chance to find one. On the second screening he was able to find no claim but he made a plea for the opportunity to fabricate one. On the third stage he was able to show no claim but he filed a plea that he was entitled to inflict pain on the defendant for its own sake in the hope that maybe the defendant would settle. This plea was denied.

In these circumstances, the granting of summary judgment should be affirmed.

Respectfully submitted,

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October 18, 1967.

SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 23

PATRICIA WALDRON, as Executrix of the Last Will and Testament of GERALD B. WALDRON, Deceased,
Petitioner,

v.

CITIES SERVICE CO.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

I.

Cities ignores the key facts and issues.

Cities' brief ignores the central issue of this case: whether Cities in 1952 joined the other defendants in their boycott of plaintiff and others who dealt in Iranian oil. Cities has avoided the conspiracy issue from the time it moved for summary judgment by deliberately withholding the affidavit of W. Alton Jones, the person who knew all the facts concerning Cities' involvement with plaintiff and Iran and, instead, submitting the affidavit of George H.

Hill, Jr., a lawyer who had never met plaintiff and who knew nothing of Cities' dealings with the Iranian oil industry.

When Cities moved for summary judgment it was required by rule 56 to submit an affidavit by an officer having knowledge of the facts, denying Cities' participation in the conspiracy alleged in the complaint. Had Cities attempted to satisfy this requirement, plaintiff would then have been entitled to examine that officer to determine the facts upon which the denial was made. In Cities' case, that officer was Jones. Cities failed to submit Jones' affidavit and failed to deny the conspiracy. Instead, Hill's affidavits were submitted, with the result that, although plaintiff wanted to examine Jones, the district court limited plaintiff to an examination of Hill on the evidentiary issues of Kuwait and the Consortium, the only matters dealt with in Hill's affidavits. With Jones' death in 1962, plaintiff was deprived of the examination of the one officer who knew whether Cities conspired. Thus Cities reaped the benefit of having failed to satisfy its initial burden.

It is no answer to say that plaintiff has examined the Cities employees he specified who were "still alive" at the time examination was permitted (Resp. Br. p. 90). Those belated examinations were so restricted that adequate disclosure of the facts was impossible (see Petitioner's Br. pp. 31-39). Discovery of other defendants, repeatedly sought, was not even permitted. The refusal to produce Jones when he should and could have been produced requires that plaintiff be given full, not restricted, discovery of Cities and of each of the other defendants and witnesses with whom Jones was in contact in order that plaintiff may piece together the complete circumstances of the conspiracy.

Illustrative of Cities' failure to come to grips with the issue of conspiracy is its failure to make any reference in its brief to the fact, admitted by one of its officers, that

Cities was threatened with a loss of its supply of oil if it should continue its Iranian oil venture (R. 5034; Petitioner's Br. pp. 18-19). The events of the American Petroleum Institute convention, which Cities chooses to call "peripheral assertions" (Resp. Br. pp. 59-60), when coupled with the fact that Cities responded to the threat by ending any further thought of securing a long-term supply of Iranian oil through the vehicle of plaintiff's contract (Petitioner's Br. pp. 18-19) and the fact that, after announcing its support for the cartel, Cities signed an agreement to purchase Kuwait oil from Gulf Oil Corp., one of the co-conspirators (*id.* at 19-20), themselves raise triable issues concerning Cities' motive for dropping the Iranian proposal sufficient to justify denial of the motion for summary judgment. These facts require that plaintiff be given full discovery of all the actors and documents involved. The order of July 9, 1964 allowed no inquiry concerning contacts between Cities and other defendants after October 1, 1952, thus foreclosing plaintiff from learning what happened at the American Petroleum Institute convention in November 1952. No effort by Cities to justify the district court's refusal to permit plaintiff such discovery is, or can be, made. Cities' only recourse is to ignore the matter.

Plaintiff is not concerned, as Cities' suggests, with the absence of a mere formal pleading (Resp. Br. p. 74). What does concern plaintiff is that Cities failed to produce Jones, the man who knew what happened, and that Cities has steadfastly refrained from denying by any sworn statement or testimony that it joined the conspiracy. Having permitted Cities to suppress strong, firsthand evidence—Jones' testimony and records —and accepted limited and secondhand evidence in its place, the court compounded

its error by refusing to allow plaintiff to examine persons having knowledge of the facts and then entering summary judgment against him for failure to set forth those facts.

II.

Cities' argument rests on a jumble of misleading labels and is refuted by the record.

Cities' brief should be labelled *"Caveat Lector,"* for, in truth, it is no more than a clever mixture of labels and distortions. The technique is to take several isolated facts, call each one a "theory," give each "theory" a label, and then assert that the "theories" were advanced and then abandoned by plaintiff one after the other over the years. The trouble with the technique is that the record refutes it.

On page 76 of Respondent's Brief, for example, the following statement is made:

> "Indeed, it was not until over a year after Jones had died, that petitioner invented the turnabout or change-of-heart theory and amended his complaint."

The statement is made in an effort to convince the Court that plaintiff did not advance a "theory" under which he sought to examine Jones until after Jones had died. No citation to the record in support of the statement is made, nor could any be made, for the statement is contrary to fact.

Cities' own characterization of the so-called "turnabout theory" is found on pages 24-27 of Respondent's Brief. There, on pages 25-26, Cities quotes a passage from the oral argument in the district court, in which plaintiff's

counsel explained that his case against Cities was based upon Cities' turning away from the opportunity to participate in Iran and joining the other defendants in their conspiracy to boycott those who dealt in Iranian oil. In that argument, the court referred to the conspiratorial behavior of Cities as "turnabout" (Tr. Vol. III, 108). This is the argument which Cities asserts was "invented" "over a year after Jones had died." (Resp. Br. p. 76.) *Cities fails to mention that the argument which it quotes occurred on May 9, 1960, two years before Jones died!* (Tr. Vol. III, 32, 108.)

Cities also fails to tell the Court that during the same argument on May 9, 1960, plaintiff's counsel specifically requested discovery of Cities and urged (Tr. Vol. III, 118):

"The place to begin is with W. Alton Jones."

Plaintiff's claim, that Cities turned away from the opportunity to participate in the Iranian oil industry and joined the conspiracy of the other defendants, was first raised by plaintiff in paragraph 10(i) of his original complaint, filed in 1956 (Tr. Vol. II, 55-62a). Under this claim, plaintiff urged from the outset that Jones was the man with whom he had dealt, who had personal knowledge of Cities' dealings concerning Iran and who logically should be examined first. As he had at the initial argument on the merits of Cities' motion, plaintiff's counsel in the next argument, on May 3, 1961, again pointed out that the central issue in the case was *whether* Cities conspired, not *why* it conspired, and that the man who should be produced for examination on that subject was Jones (Tr. Vol. III, 136, 141-42). In stressing the urgency of producing Jones, plaintiff's counsel noted that two of the officers at Cities with whom plaintiff dealt, Shaw and Whetsel, had already died and that an examination of Hill would only

prolong the time during which plaintiff was being kept from examining the people essential to his case (*id.* at 141-42). Thus, contrary to what Cities would have this Court believe, plaintiff has consistently alleged and argued his claim of conspiracy from the filing of the original complaint to this day. Under that claim, plaintiff repeatedly sought to examine Jones prior to his death.

Cities ignored plaintiff's allegations of conspiracy and concentrated on the Kuwait contract between Cities and Gulf and Cities' opportunity to participate in the Consortium. Plaintiff, however, did not limit himself to those two items of evidence, nor even to the threatened boycott against Cities at the American Petroleum Institute convention, nor to the fact that Cities, contrary to its apparent self-interest, rejected the opportunity to go into Iran, nor to the fact that Richfield, a Cities affiliate, had mysteriously refused to buy Iranian oil from him—all of which he testified about at his deposition (Tr. Vol. II, 114a, 118a; R. 5034). Again and again, plaintiff made clear his position, originally set forth in paragraph 10(i) of the complaint itself (Tr. Vol. II, 56a), that he expected more evidence of conspiracy to be forthcoming during discovery (Tr. Vol. II, 86a, 90a, 98a, 99a, 110a, 112a, 114a). But Cities would rather talk about Kuwait and Consortium, the two principal items of evidence which led plaintiff to sue Cities, as if plaintiff's case stands or falls on why he decided to sue and as if he were limited in his proof at trial to what he knew prior to discovery.

No citation to the record can support Cities' claim that Kuwait and Consortium were abandoned by plaintiff (Resp. Br. p. 24). Kuwait and Consortium remain as events whose implications and backgrounds must be developed on general discovery. In the meantime, the inference that they resulted or were promised when Cities adopted a course of conduct common to that of the cartel is as compelling as any contrary inference.

Similarly, there is no support for Cities' contention that plaintiff abandoned his consistent claim that Cities was acting pursuant to the conspiracy when, despite its keen interest in Iranian oil, it turned down the opportunity offered to it by plaintiff to manage the Iranian oil industry. Here, Cities endeavors to persuade the Court that plaintiff "abandoned" or "recanted" the "turnabout theory" (Resp. Br. pp. 32-33). According to Cities, plaintiff asserted, first, that Cities was interested in Iranian oil, then that Cities lost interest in Iranian oil, and, finally, that Cities never lost interest in Iranian oil. This misconstrues plaintiff's position. Plaintiff's consistent claim from the time of the original complaint in 1956 to this very day has been that Cities was interested in acquiring Iranian oil but that Cities gave up its chance to pursue that interest through the exploitation of plaintiff's contract with the Iranians and, instead, joined the conspiracy to boycott plaintiff and the Iranians.

Cities' final "theory" which it attributes to plaintiff concerns Richfield (Resp. Br. p. 33). As set forth in plaintiff's main brief, pages 20-21, plaintiff's negotiations to sell Iranian oil to Richfield Oil Corporation in 1953 had progressed to the point that samples of crude oil were flown from Iran to Richfield's laboratory for analysis. Richfield terminated these discussions suddenly and without explanation. Plaintiff has never contended, early or late, that the evidence in the present record proves that Cities ordered its affiliate, Richfield, to ditch plaintiff. What plaintiff has contended from the beginning of his case is that the Richfield incident was one of many incidents which demonstrate the existence of a boycott against plaintiff and that, before the court could even consider dismissing plaintiff's case against Cities, which owned one-

third of Richfield. (Tr. Vol. I, 112a) and placed several directors, including Jones, on its board (R. 10818), plaintiff should have had discovery in order to place all the facts before the court. It is no answer to say that the few Cities officials who were examined did not know much about Richfield. The place to begin the Richfield discovery is with Richfield.

Thus, Cities' effort to persuade the Court that plaintiff asserted, in sequence, a "Kuwait and Consortium theory" followed by a "turnabout theory" which was then replaced by a "Richfield theory" has no support in the record. Plaintiff's claim—conspiracy—has been consistent. It is supported by many facts, none of which have been abandoned. It is facts, not labels and theories, on which summary judgment motions must be decided.

III.

A. Reply to Point II of Respondent's Brief.

Cities asserts that "assuming every one of the factual assertions found in petitioner's brief is true," except the assertions concerning the role of Jan Sandberg, "there still remains no triable issue of fact. . . ." (Resp. Br. p. 49.) Thus, for purposes of this appeal, Cities concedes the facts set forth at pages 8-21 of Petitioner's Brief, which, as pointed out in Point III of that brief, require that Cities' motion be denied. Those facts are (1) plaintiff, through his contract with the Iranians, presented to Cities a unique opportunity to satisfy its chronic oil shortage; (2) Cities went to Iran, found the facilities in good condition and recommended a long-term arrangement with the Iranians which contemplated a major role for Cities; (3) Cities, acting in a manner which contravened its own

apparent self-interest and which furthered the interests of the Middle East oil cartel, refused to deal with plaintiff or the Iranians; (4) Cities actively interfered in plaintiff's efforts to sell oil under his contract; (5) during this period an invitation to join in the boycott of Iranian oil was published by Anglo-Iranian in the newspapers; (6) in the midst of his Iranian talks, Cities' top official, Jones, secretly visited Kuwait, where cartel members Anglo-Iranian and Gulf owned the oil concession; (7) Cities was specifically threatened with loss of its supplies if it did not toe the line; (8) Cities suggested to public officials that the cartel members, not Cities, were the proper parties to take over the Iranian oil industry; and (9) after announcing its support for the position of the cartel, Cities obtained a contract from Gulf to buy Kuwait oil.

The one lame attempt which Cities makes to avoid the impact of some* of the above facts is to assert that plaintiff's counsel in a brief in 1964 conceded that Cities did not conspire (Resp. Br. p. 54). Cities has taken the statement by plaintiff's counsel wholly out of context. The passage from plaintiff's brief in the district court, only one sentence of which is quoted by Cities, was addressed to the point that plaintiff was not yet able to pinpoint the precise date when Cities joined the conspiracy. This was the same point which counsel had earlier made to the court to illustrate the impossibility of setting forth "specific facts" under rule 56 in advance of full discovery (oral argument of May 27, 1963, R. 11823; Petitioner's Br. pp. 30-31). The sentences following the so-called concession, which Cities omitted in its quotation, reveal this to be the

* As mentioned earlier, pp. 2-3, Cities way of avoiding the impact of the threatened boycott at the American Petroleum Institute convention is to ignore it.

correct context in which counsel's comments were made.* The passage, with the sentences omitted by Cities in italics, is as follows:

> "Plaintiff does not claim that Jones was acting on behalf of a conspiracy when he sought the invitation, or when he went to Iran, or when he held his Tehran press conference, or when he wrote the conclusions to his final draft report on October 31, 1952 (Pltf's Ex. CS-119). *We cannot say when the first contact was made with him by those from whom he sought to conceal his trip to Iran because it was obviously hostile to their interests. We can only speculate, at this point, whether Jan Sandberg was the avenue of communication. We do have good reason to believe that the heat was on Jones at the time of the annual banquet of the A.P.I. in early November, 1952 (10422-5), and the fact seems to be that he held back and never did send out the final report of October 31, 1952 (Pltf.'s Ex. CS 119) to Mossadegh (10728).*" (Tr. Vol. II, 460-61a.)

Behind Cities' barrage of words about "concessions," "admissions" and "theories," lies one thought: that plaintiff must lose because he does not know the minutiae of the conspiracy. Merely to state the proposition is to refute it. If plaintiffs in civil antitrust actions were to be held to such standard of proof on the issue of conspiracy, especially on summary judgment motions prior to general discovery, they could never prevail, and the legislative policy favoring the private policing of the antitrust laws would be frustrated. The law is otherwise. The authorities are cited and discussed in plaintiff's main brief, pages 43-46. Far from imposing a strict standard of proof of the

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* To demonstrate fully the context in which the statement relied on by Cities was made, the entire point in the brief from which the statement was taken is set forth in Appendix A, *infra* pp. 31-33.

element of intent to conspire in civil antitrust litigation, the law is liberal in accepting circumstantial evidence, in recognition of the fact that the proof of conspiracy is invariably under defendant's control.

In Point II of its brief, Cities also attempts to demonstrate that it bowed out of the Iranian venture because of various findings in the proposed report to Mossadegh (Resp. Br. pp. 63-68). That attempt raises more issues of fact than it answers.

First, in quoting sections of the report entitled "Maintenance and Repair Material" and "Automotive Facilities," Cities wishes this Court to believe that one of the largest independent oil companies, contemplating a multi-million dollar operation, was thwarted by a need of a few trucks and spare parts. In fact, Heston's finding concerning equipment and spare parts was that:

> "* * * there would be a minor problem of getting repair parts and replacements but that where they could not be obtained, that the whole piece of equipment could be removed and replaced by American equipment. So that I didn't feel it would be any real problem." (R. 10921-22.)

Before Jones went to Iran, he informed Secretary of the Interior Chapman:

> "The wide experience of our organization in the production, transportation, refining and marketing of oil leads us to believe that we could successfully undertake the supervision of the rehabilitation and reactivation of the oil properties in Iran." (R. 10595, 10605.)

Heston admitted that nothing in the technical aspects of reactivation of Iran's oil industry caused Jones to change his mind (R. 10959). The suggestion that Cities turned

away for want of a few spare parts is nonsense. At most, Cities has raised a question for the jury.

Second, Cities misreads the proposed report to Mossadegh. Referring to the report's recommendation that the Iranians enter a long-term contract with "an American oil company" (Tr. Vol. II, 37a), Cities states in its brief (Resp. Br. p. 68):

> "The report is clear that Jones did not recommend this last-ditch alternative or regard it as a solution to Iran's problems."

Regardless of what Cities may consider "clear," this proposal is contained in the section of the report headed "Recommendations—W. Alton Jones" (Tr. Vol. II, 35-37a), and it is set forth in words that say:

> "If the deliberations of the above committee are unsuccessful in developing a satisfactory agreement, *it is recommended* that the National Iranian Oil Company endeavor to enter into a long term agreement with an American oil company to purchase Iranian crude oil * * *." (Tr. Vol. II, 37a) (emphasis added).

Cities cannot now escape the fact that Jones regarded a long-term purchase agreement with the Iranians as a workable proposal, both as a beginning to the solution of Iran's problem and as a solution to Cities' chronic need for oil, simply by denying that Jones recommended such an agreement and by calling it a "last-ditch alternative." Jones himself said he recommended it; whether it was "last-ditch" or not is for the jury to determine.

Cities' moment of high dudgeon comes with what it calls the "demonstrably false" assertion concerning Sandberg (Resp. Br. p. 49). As mentioned in plaintiff's main brief, page 13, Jones stopped on the way to Iran for five days of

secret conferences with Sandberg, in the midst of which he and Watson exchanged coded cables concerning the availability of tankers to lift Iranian oil. At his deposition in 1964, Watson admitted that Sandberg had "a position" with cartel member Royal Dutch/Shell (Tr. Vol. II, 425a). Cities now attempts to withdraw its officer's sworn admission.

Cities refers the Court to an alleged off-the-record incident between the witness and plaintiff's counsel shortly before Watson's admission was made and asserts that, in admitting Sandberg's connection with a co-conspirator, Watson was simply regurgitating what counsel told him (Resp. Br. p. 50). We deny these "facts" as earnestly as they are asserted. Plaintiff's counsel was not so naive as to tip his hand off the record in such a manner, nor was Watson so unthinking as to regurgitate such a telling admission against his company. The truth is revealed in Watson's answer. Though Cities asserts that Watson first learned of Sandberg's connection with Shell only a few minutes earlier, Watson said (Tr. Vol. II, 425a):

> "I do not know when I became familiar with his position in Royal Dutch Shell."

If he had been told a few minutes before, Watson would have known when he learned of Sandberg's position. Obviously, Watson did not learn this information from plaintiff's counsel, and Watson himself has never claimed that he did.

Cities' attorney's affidavit and the perfunctory affidavit of Sandberg deal only with formal employer-employee relationships and do not answer Watson's admission. The affiants passed up the opportunity to inform the court what

Jones and Sandberg talked about in Amsterdam as Jones was on his way to Iran and, again, on his return.

The Sandberg incident is a graphic example of the many sources of evidence which are foreclosed to an antitrust plaintiff when summary judgment is granted without general discovery. Such a decision can only create more issues than it settles.

B. Reply to Point III of Respondent's Brief.

Plaintiff takes no exception to the summary judgment cases cited by Cities (Resp. Br. pp. 69-72, 88-90). If anything, they emphasize the reluctance of the courts to grant summary judgment prior to the completition of full discovery and prior to the sworn denial of the wrongdoing alleged in the complaint. In each of them the moving party specifically denied or disproved, by officers or employees having knowledge of the facts, the allegations of wrongdoing contained in the complaint. This Cities has never done.

Cities' conclusory statement in its brief that it has denied the conspiracy is supported only by reference to the affidavits of Hill, who did not deal with the issue of conspiracy, and the affidavit of Cities' attorney, which was filed four years after the motion was made (Resp. Br. pp. 73-74). Such documents are not sufficient to satisfy the requirement of rule 56(e) that supporting affidavits shall be made on personal knowledge.

At places in its brief Cities seems to argue that it has obviated any need for denial of the conspiracy by furnishing what it considers to be proof of a nonconspiratorial motive for its actions (Resp. Br. pp. 20-21, 36-40, 62-68). It may be that an antitrust defendant can, in a proper case, negate the conspiracy by convincing proof of a non-

conspiratorial motive for its conduct without denying the conspiracy in so many words, although its failure to do the latter will aways be suspect. But if it wants to proceed in that manner, its proof, we respectfully submit, must be by affidavit by its officers or employees with knowledge, and supported by the entire record. Cities has never furnished such affidavits and support, although Jones was available to explain the facts at the time Cities moved for summary judgment. Such "proof" as there is in the record of a nonconspiratorial purpose for Cities' jilting of plaintiff consists of counsel's argument on the basis of selected passages from selected documents from Cities' files. And who but Cities itself selected these documents!

Moreover, plaintiff draws an opposite inference from the record. For instance, with respect to the Kuwait oil transaction, Cities suggests that its Operating Committee formally approved the contract before Cities became involved in Iran (Resp. Br. p. 20). Frame, chairman of the Operating Committee, admitted, however, that the Committee had no authority to act (R. 10458). Watson added that there were "still a lot of details on the Gulf contract to be worked out" at the time Jones was in Iran (R. 10646-47), and he assured Jones by cable that it was not necessary for Cities to commit itself on the Gulf contract until Jones returned from Iran (R. 10642). Regardless of whether there were significant changes in the Kuwait contract which benefited Cities after Jones returned from Iran, as plaintiff contends (Petitioner's Br. pp. 19-20), or no changes, as Cities contends (Resp. Br. p. 20), Cities was threatened with a loss of its supplies by the major companies at the American Petroleum Institute convention if it went into Iran. Cities stayed out of Iran, took a position supporting the cartel companies, and then was allowed to receive Kuwait oil.

The record thus strongly supports plaintiff's inference of conspiracy.

With regard to the Iranian Oil Consortium as subsequently formed, Cities claims it was not a conspirator because it received a lesser percentage of that Consortium than it hoped for (Resp. Br. p. 21). Watson testified that he and Jones contemplated a consortium of oil companies, including Cities, in Iran as early as August 1952 (R. 10572). Plaintiff was not permitted, however, to have discovery of the background of Cities' activities concerning an Iranian consortium (R. 10439, 10453-54), so that the issue of whether Cities' hope, or expectation, concerning its share in a consortium resulted from a promise by the other defendants as one of the inducements for Cities to join the conspiracy has been left unanswered.

Cities contends that the letters written by Jones to Secretary of State Dulles and Attorney General Brownell, in which Jones stated that "the only honorable solution" to the Iranian controversy was agreement with the cartel companies, were not proof of behavior conforming to the aims of the cartel because Jones enclosed copies of a legal opinion from John W. Davis with his letters (Resp. Br. p. 61). What Cities fails to mention is that Jones, in enclosing the Davis opinion, took pains to assure Dulles and Brownell that he had no intention of using its advice or revealing its contents to others! Jones stated to Dulles:

> "Please understand further that this opinion was not secured with the idea of supporting any contemplated action which I might take in the purchase of oil.
>
> • • • • •
>
> "There has been no general distribution made of this opinion and brief; in fact only Mr. Winthrop Aldrich, Mr. Herbert Brownell and yourself have received copies." (Tr. Vol. II, 394-95a.)

It is evidence of conspiracy—not the contrary—that Cities suppressed an opinion that purchasers of Iranian oil would have no legal difficulties in American courts and gave assurances that, in any event, Cities would not act on such advice.

Jones' letters to Dulles and Brownell plainly demonstrate Cities' adherence to the aims of the cartel, yet Cities relies upon them to prove the absence of a conspiratorial motive (Resp. Br. 31-32, 61). Certainly they raise yet another issue of fact. Moreover, if Cities is to be permitted to rely upon them to obtain summary judgment, plaintiff should be permitted discovery into the circumstances of their preparation and sending.

Cities' assertion (Resp. Br. p. 75) that the absence of testimony from Jones raises no inference of conspiracy cannot be supported by the record. Plaintiff had no chance to examine Jones: plaintiff's request to lift the stay of his discovery was opposed by Cities and denied by the district court in 1958 (R. 11159-63); his specific request to take Jones' deposition was opposed by Cities and denied in 1960 (Tr. Vol. III, 118; Vol. I, 69a) and again in 1961 (Tr. Vol. III, 136, 143); similarly, his request for full production of Jones' documents was opposed by Cities and denied in 1964 (R. 11762-72; Tr. Vol. I, 55-58a) and again in 1965 (Tr. Vol. I, 17a). The compelling inference is that Cities was afraid of what plaintiff would learn from Jones and his documents.

The contention (Resp. Br. pp. 75-77) that the Cities officials who testified were not subordinates and had the same knowledge as Jones concerning Cities' Iranian oil transactions is refuted by the witnesses' own testimony. They testified again and again that Jones was off on his own visiting Kuwait, Mossadegh, Sandberg, President Truman,

and others, and that Jones did not keep them informed as to his activities.*

Watson, the Cities official ranking next in importance to Jones, conceded just how little he knew:

> "Again I say I could not speak for Mr. Jones. He went over there on the ground and certainly he got himself in a much better position to judge all of the factors involved than I. His views might not have—although he never quarreled with me about it at all—but after he got back from Iran and discussed this thing generally with us, about his trip and all, frankly he did not take me into his confidence too closely. For instance, I never knew whether he sent this report in and I never went to Washington with him again when he did go down there to report to various places.
>
> Believe me, I am not accusing him of slighting me or anything of that sort, but I think he had the feeling he had the grasp of this problem much better than I did and carried it on himself pretty much." (R. 10730.)

Later Watson added:

> "Q. * * * Mr. Jones also speaks of extended conferences with oil executives. A. I have no idea who they were.
>
> "Q. You have not? A. He never talked to me about seeing Joe Doakes or any of these oil people and discussing the subject with them. He may very well have at API meetings, things of that sort, but I do not know the nature of those discussions, if he had them." (R. 10753.)

---

* Indeed, Jones did not tell even his attorneys about the secret trip to Kuwait (see Resp. Br. p. 57). This fact illustrates why attorneys' statements and selected records cannot be accepted on motions for summary judgment. Full disclosure is necessary.

After testifying that he did "some sightseeing and a lot of waiting" during the five days Jones spent with Sandberg on the way to Iran, Frame added:

> "Q. What was the occasion for staying five days? A. Mr. Jones wanted to stay.
>
> "Q. Do you know what Mr. Jones was doing? A. Except seeing Mr. Sandberg, as far as I know, I know of nothing else.
>
> "Q. Well, how much do you know of how many times he saw Sandberg? A. I have very little knowledge of that.
>
> "Q. So you don't know what Mr. Jones was doing? A. That is correct." (R. 10348.)

As to the extent of his knowledge of what Jones was doing in Iran, Frame testified:

> "Q. Was Mr. Jones off negotiating on his own at this point? A. I don't think he was doing any negotiating, no.
>
> "Q. Was he off on his own? A. Sometimes.
>
> "Q. Do you know what he was doing when he was away from you? A. No.
>
> "Q. Did he report back? A. No.
>
> "Q. He did not discuss at night what transpired? A. No." (R. 10356.)

With respect to Jones' method of dealing with his subordinates in Cities, Frame testified:

> "Q. There was some humor yesterday about this point. Was this the nature of Mr. Jones, that he did what he did and he did it on his own, and you were staff and he didn't tell you any more than was necessary? A That's correct." (R. 10402.)

Heston, who was with Jones in Iran, had a similar lack of knowledge concerning Jones' secret trip to Kuwait:

"Q. Was there any discussion about you accompanying Mr. Jones to Kuwait? A. No.

"Q. To the best of your knowledge, did Mr. Jones go alone? A. I don't know.

"Q. Do you have any knowledge of who went with Mr. Jones, if anyone? A. No.

* * * * *

"Q. Did he tell you who he had seen. A. No.

"Q. With whom he had talked? A. No.

"Q. What he had said? A. No." (R. 10945-46.)

Hill, of course, knew nothing more about Jones' activities in Iran other than that he went there (R. 9902, 9880, 10035; see Petitioner's Br. pp. 24, 29). He also revealed the distance Jones kept between himself and Hill, the man Cities proffered as its witness:

"Q. I see. Then your answer is that Mr. Jones may have told you a fair amount but you don't recall it now; is that right? A. Not that I don't recall it. I am sure that he did not tell me he was writing to Mr. Dulles or to Mr. Parkhideh or to others. You just didn't go and ask Mr. Jones, 'What are you doing, Mr. Jones?' If he wanted to tell you, he would.

"Q. Did Mr. Jones tell you what he had done after he had done it? A. Not often." (R. 10034.)

Thus, not only were Hill, Watson, Frame and Heston subordinate to Jones, but they did not even know what Jones was doing, all of which makes overwhelming the inference that Cities had something to hide when it failed to produce Jones (see Petitioner's Br. pp. 56-57).

Cities' contention (Resp. Br. p. 80) that something more than conforming behavior must be shown to create an inference of conspiracy sufficient to defeat a motion for summary judgment is incorrect and, besides, is not to the

point, for the record shows much more than conforming behavior (see Point III of Petitioner's Brief). The authorities, holding that proof of conforming behavior having the effect of promoting the alleged conspiratorial purpose raises an issue of conspiracy for the jury, are set forth and discussed in Petitioner's Brief, pages 62-64. Indeed, the article cited by Cities (Resp. Br. p. 80) takes the position, contrary to Cities contention, that under certain circumstances parallel behavior alone "may reasonably be said to involve an element of agreement" in violation of the Sherman Act. Turner, *The Definition of Agreement under the Sherman Act: Conscious Parallelism and Refusals to Deal,* 75 HARV. L. REV. 655, 681 (1962).

Cities next argues that the lower courts did not relieve Cities of its initial burden to demonstrate the absence of genuine fact issues, as plaintiff says they did* (Resp. Br. pp. 81-90). That contention is refuted both by what the courts did and by what they said.

Judge Herlands could not have been more explicit in placing the burden on plaintiff when, in his final opinion, he said:

> "The single issue before the court relating to Cities' motion for summary judgment, is whether plaintiff's discovery has unearthed a 'genuine issue [of fact] for trial' where nothing had existed before but 'suspicion' and 'gossamer inference drawn from the mere sequence of events.'" (Tr. Vol. I, 10-11a.)

The district judge's pronouncement leaves no doubt that he thought plaintiff had the burden of demonstrating fact issues. Not only did Judge Herlands ignore the many issues of fact to which plaintiff directed him, but his rul-

* Cities idea of meeting its burden is to suggest that plaintiff should have performed the task for it (Resp. Br. p. 74).

ing that plaintiff had such burden conflicts with the authorities set forth in Point II of Petitioner's Brief. The court of appeals repeated the error:

> "Despite these more than ample opportunities to develop a basis for his action, plaintiff has been unable to do so, *and has failed to demonstrate the existence of any genuine issue of fact.*" (Tr. Vol. III, 176) (emphasis added).

The lower courts' treatment of the motion shows that they practiced what they preached. Nowhere in the district court's final opinion did it consider the complete absence of evidence from Cities on the question of whether it joined the conspiracy, as the court was required to do before turning to plaintiff's case. From one end to the other, Judge Herlands' opinion was a dissection of plaintiff's case. Cities' suppression of Jones' testimony was ignored.

Cities' assertion that the district court placed "an unusually heavy burden on it" is no answer (Resp. Br. p. 82). To support this assertion, Cities quotes a passage from an oral argument but fails to mention that the argument occurred on May 9, 1960, three years before rule 56(e) was amended (Resp. Br. pp. 82-83). After the amendment, the courts below proceeded consistently on the assumption that plaintiff, not the moving defendant, was required to demonstrate the absence of genuine issues of of fact (Petitioner's Br. pp. 53-55).

Cities is grossly mistaken when it says that plaintiff did not argue below that Cities had the burden of demonstrating the absence of any genuine issue of fact (Resp. Br. pp. 72, 81). In his very first brief in opposition to Cities' summary judgment motion in 1960, plaintiff argued that

Cities had not sustained the burden of negating the conspiracy. Point II of that brief was entitled:

> "The Motion Is Defective"

and the first subheading was entitled:

> "(a) The documentary evidence does not negate plaintiff's claim that Cities was bought off by Gulf and Anglo-Iranian."

Plaintiff preserved his position throughout. When, on May 27, 1963, during oral argument on Cities' motion the district court drew the attention of counsel to the new amendment to rule 56(e) (R. 11802), plaintiff's counsel emphasized his position that the amendment was not intended to alter existing standards under rule 56 nor to cut off a plaintiff's right to examine (R. 11826). In a memorandum filed in opposition to Cities' motion on August 16, 1963, plaintiff, after reviewing the facts, put the issue as follows (at 41-42 of said memorandum):

> "Can we really say with any conviction that Cities Service has demonstrated the absence of any dispute as to the material issue of whether Cities Service conspired to boycott plaintiff?"

Finally, in his brief in the court of appeals, plaintiff discussed and distinguished the cases which Cities relied upon to justify the district court's action under rule 56(e), including *Dressler* v. *M.V. Sandpiper,* 331 F. 2d 130 (2d Cir. 1964); *Scolnick* v. *Lefkowitz,* 329 F. 2d 716 (2d Cir. 1964); and *Schwartz* v. *Associated Musicians of Greater New York, Local 802,* 340 F. 2d 288 (2d Cir. 1964), which Cities cites to this Court as authority supporting the grant of summary judgment under the amendment to rule 56(e) in this action (Resp. Br. pp. 69-70, 85, 90).

C. Reply to Points I and IV of Respondent's Brief.

Cities contends in Point I of its brief that, if plaintiff has not had general discovery, it is plaintiff's own fault. In Point IV, Cities asserts that, in any event, plaintiff was given enough discovery.

Cities begins by suggesting that Judge Weinfeld's order in 1956 by which plaintiff was forbidden to engage in discovery was fashioned after an "accepted practice" in the Southern District (Resp. Br. pp. 2-3). Judge Weinfeld's response to the same suggestion by Cities' counsel in another case was:

> "There is no 'generally accepted' policy or practice in this District (as described in defendants' brief) 'of extending a defendant's time to move against or answer the complaint in a private treble-damage antitrust suit until after he has completed the taking of a plaintiff's deposition * * *'." *Ideal Pictures, Inc.* v. *Films Inc.*, 190 F. Supp. 433, 434 (S.D.N.Y. 1961).

It is unthinkable that any court would have a practice or policy sanctioning an eleven-year stay of discovery against a party.

Cities next attributes to plaintiff every single delay and adjournment in the action since 1956 (Resp. Br. pp. 4-12). While the question of who requested adjournments is hardly dispositive of the issues before this Court, the effects of an eleven-year stay of discovery should not be placed at plaintiff's feet by saying that he asked for the time when in fact he did not. To correct this impression, it is necessary to respond in detail:

> 1. Cities states that during the first year of depositions all the adjournments were at petitioner's

request or consent and that, "The record reveals none requested by defendants." (Resp. Br. p. 3.) The portions of the record cited at page 3 of Cities' brief in support of that statement in fact reveal that three of the six cited adjournments were requested by defendants, not plaintiff (R. 337, 656, 2110); one was requested by plaintiff, due to illness (R. 1621); and the record is silent as to who requested the remaining two (R. 1372, 3182).

2. Cities states that the deposition schedule which followed plaintiff's futile motion for a protective order was postponed "at petitioner's insistence" (Resp. Br. p. 4), but the stipulation cited (Tr. Vol. IV, 224) does not reveal who requested the postponement.

3. Cities prides itself on its 3½ day examination of plaintiff (Resp. Br. pp. 4, 7, 16, 21, 74), but it neglects to tell the Court that plaintiff had been examined again and again on every aspect of his case by six other defendants over 91 deposition sessions attended by Cities, covering 6,056 printed pages and over 1,000 documents, before Cities took up the campaign.

4. Cities chides plaintiff for delaying the service of his amended complaint, yet the referenced stipulation recites that the delay occurred "At the request of counsel for Cities Service." (Tr. Vol. IV, 259.)

5. Cities accuses plaintiff of "delaying tactics throughout his discovery of Cities" (Resp. Br. p. 10), yet the passages which follow refer to a delay in Hill's deposition occasioned by an application by defendant Standard Oil Co. of California to place certain documents produced by Cities under seal of the court (Resp. Br. pp. 10-11).

6. Cities attributes to plaintiff the delays which occurred during defendants' examinations of non-

> party witnesses (Resp. Br. p. 9) when, in fact, defendants noticed those depositions and were responsible for their length. Indeed, plaintiff moved to vacate defendants' notices of those depositions in 1958 and asked to commence his own discovery. The court, however, denied plaintiff's motion and required him to wait until defendants completed their examinations of these nonparty witnesses before permitting plaintiff to commence the limited discovery afforded him. As a result, plaintiff was forced to wait a year before examining Hill on the two issues prescribed by the court, and, in the meantime, Jones died.

Cities' suggestion (Resp. Br. pp. 4, 44-45, 90) that the deposition schedule could have been completed in one year is nonsense. Lawyers and litigants are not required to work every day on one case to the exclusion of all their other responsibilities. The point is that plaintiff should not have been stayed from all discovery throughout the three-year period taken up by plaintiff's deposition much less the three additional years which defendants used to examine nonparty witnesses.

Cities next claims, for the first time, that plaintiff has not been stayed at all during the past five years. The argument which seems to be made, albeit hesitantly, is that Judge Herlands' order of February 11, 1958 (R. 11157), superseded Judge Weinfeld's order of July 11, 1956 (R. 11045) (Resp. Br. pp. 4-6, 45).

Until now, even Cities has recognized that the denial of a motion to terminate a stay leaves the stay in effect. This position has been accepted by every party in the case, *including Cities.* In its brief to the Court of Appeals, Cities, in reviewing Judge Herlands' order, stated (at S-4 of said brief):

> "By their detailed review of the conduct of the litigation up to that point, defendants satisfied Judge Herlands that the procedure adopted by Judge Weinfeld was not only suitable *but should be continued* * * *." (Emphasis added.)

Again, on page S-1 of the same brief, Cities stated that Judge Herlands' 1958 order *"continued the procedure established by Judge Weinfeld."* (Emphasis added.)

The reason why Cities and the other parties have heretofore regarded the stay of discovery to be still in effect is plain: it is still in effect. Judge Weinfeld's order stayed discovery until after defendants answered; defendants were not required to move or answer until after they completed discovery. When defendant's discovery was completed in May 1962, defendants other than Cities prepared a motion to strike portions of the complaint. In order "to save the Court and all parties unnecessary work," plaintiff agreed to amend his complaint. (Tr. Vol. IV, 256) and gave copies of the proposed amended complaint to defense counsel on June 15, 1962. Cities then asked plaintiff to adjourn the schedule for amending the complaint until the examination of Cities was complete (*id.* at 259). Plaintiff agreed (*ibid.*). Rulings on objections to questions at Hill's deposition were made on April 22, 1963 (Tr. Vol. III, 15). Plaintiff then moved for further discovery of Cities, and Cities renewed its summary judgment motion. Argument was held on May 27, 1963 (R. 11781). On July 12, 1963, plaintiff filed his amended complaint (Tr. Vol. III, 15). In November 1963, the other defendants addressed two motions to the amended complaint (*id.* at 16). The first, a motion to dismiss and for summary judgment, was denied on June 23, 1964 (Tr. Vol. I, 21a). The second, to strike a portion of the amended complaint, was withdrawn on November 5, 1964 (Tr. Vol. IV, 286-88), and

defendants' time to answer began to run (*id.* at 289). Before the time to answer expired, however, plaintiff died, and Judge Herlands stayed all proceedings to await a motion to substitute plaintiff's executrix as the party plaintiff (*id.* at 290-91). The motion to substitute was granted on February 9, 1965 (*id.* at 291), and final argument on Cities' motion was held the same day (Tr. Vol. III, 144). At the end of the argument, Judge Herlands stated that other matters, including the remaining defendants' time to answer, would await disposition of Cities' motion (*id.* at 170-71). On September 8, 1965, the motion was granted (Tr. Vol. I, 5a), and plaintiff thereupon commenced this appeal (*id.* at 161a). The remaining defendants then took the position that further proceedings, including their answers, should await a determination of the appeal (Tr. Vol. IV, 292-94). Thus, at no time since the commencement of this action eleven years ago have defendants been required to answer. At all times during that period, therefore, plaintiff has been stayed from discovery.

Even more significant, however, is the fact than on no less than four occasions plaintiff has specifically requested Judge Herlands to allow him to have discovery of the remaining defendants (R. 11049; Tr. Vol. IV, 272; Tr. Vol. III, 118; R. 11799; Tr. Vol. I, 126-27a). Each of these requests was denied. Since his specific request for discovery of other defendants was denied four times by the judge assigned to the case for all purposes, plaintiff was hardly "entitled to proceed to conduct general discovery," as Cities suggests (Resp. Br. p. 5).

Cities' final point is that plaintiff was afforded adequate discovery (Resp. Br. pp. 90-96). The feeble attempts to find some justification for the district court's severe restrictions in time and scope of plaintiff's discovery refute themselves. Nothing can gainsay the fact that Judge

Herlands' orders limiting plaintiff's discovery effectively denied plaintiff his day in court and, particularly in view of the burden imposed on plaintiff, prevented him from getting at the detailed facts he was required to specify (see Petitioner's Br. pp. 42-49).

When Cities suggests that discovery under rule 56(f) should be narrower than that permitted under rule 26 (Resp. Br. pp. 46-47), it is mistaken. It may be that, in a proper case, where the motion is based on a limited defense such as payment, release or the statute of limitations, then the discovery necessary to meet that defense might be correspondingly limited under rule 56(f). But where, as here, a defendant who, together with the co-defendants, has control over plaintiff's proof moves for summary judgment on the ground that plaintiff's case has no merit, then, in order to meet that contention, plaintiff must be given an opportunity for discovery which is sufficient to enable him to prove his case. The only rule which sets forth the framework of discovery of that type is rule 26.

Cities' concluding remarks concerning the cost of litigation (Resp. Br. pp. 96-97) are particularly ironic. It is likely that this Court has never been presented with a more striking example of the means by which powerful corporate defendants can run roughshod over individual antitrust plaintiffs. This case has already earned the reputation as being the classic example of abuse of the discovery process. 4 MOORE, FEDERAL PRACTICE § 26.13[2], at 1151-52 (2d ed. 1966).

To suggest, as Cities does, that plaintiff wants "a permanent license to conduct an investigation of Cities" (Resp. Br. p. 96) is nonsense. Plaintiff, as he made clear in 1958, in 1960, in 1961, in 1963 and in 1965 when he requested Judge Herlands to permit him to have discovery of the defendants, wants nothing more than the oppor-

tunity to exercise his right to prepare and try his case like any other federal litigant. The fact that he has brought an antitrust claim against large corporations should not defeat that right.

Conclusion

The judgment dismissing the complaint as to Cities should be reversed and the action should be remanded to the district court with directions to deny Cities' motion for summary judgment and permit plaintiff to engage in discovery proceedings to the full extent permitted by the Federal Rules of Civil Procedure.

Respectfully submitted,

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APPENDIX A*

Point III of Plaintiff's Reply to Cities Service's Submission in Support of Its Summary Judgment Motion, November 4, 1964.

III.

According to Cities, "The Public Statements made by Mr. Jones do not justify any inference that Cities Service mysteriously changed its views or joined a conspiracy."

The argument here, if we understand it correctly, is that plaintiff's case now stands upon public statements to the press which Jones made in Tehran in September, 1952, just before his return to the United States (Pltf.'s Ex. CS-108), that Jones never changed the views that he expressed on that occasion, and that his expression of them in public is inconsistent with any participation by him in a conspiracy directed against Iran.

We should, perhaps, point out that what Jones is quoted as having said at the press conference is perfectly consistent with an intention on his part to run the Iranian oil industry with or without British cooperation in transportation and marketing. It would have been a bigger show with British cooperation than without, and if Jones said what Frame and Watson, who were not there, say he said to Mossadegh about the advisability of securing British cooperation (10365, 10714), he laid the groundwork for the bigger show. By saying in public that he was not particularly worried by British threats, he conveyed to the British his intention to run the operation

* See page 10.

with or without their cooperation. Everything that he said on that occasion makes complete sense and can be easily understood when considered in the light of Watson's "Secret-Draft-Secret" memorandum of August 8, 1952, written before Jones went to Iran (Pltf.'s Ex. CS-94), and Jones' final draft report to Mossadegh of October 31, 1952, written after Jones returned from Iran (Pltf.'s Ex. CS-119).

We do not deny that one inference to be drawn from Jones' remarks to the press in Tehran on September 18, 1952, if one is to proceed on inferences where summary judgment is sought, is that the remarks appear to be a kind of declaration of independence inconsistent with the captive status of a conspirator. That would only mean, in our judgment, that Jones had not yet fallen off the fence. Plaintiff does not claim that Jones was acting on behalf of a conspiracy when he sought the invitation, or when he went to Iran, or when he held his Tehran press conference, or when he wrote the conclusions to his final draft report on October 31, 1952 (Pltf.'s Ex. CS-119). We cannot say when the first contract was made with him by those from whom he sought to conceal his trip to Iran because it was obviously hostile to their interests. We can only speculate, at this point, whether Jan Sandberg was the avenue of communication. We do have good reason to believe that the heat was on Jones at the time of the annual banquet of the A.P.I. in early November, 1952 (10422-5), and the fact seems to be that he held back and never did send out the final report of October 31, 1952 (Pltf.'s Ex. CS-119) to Mossadegh (10728).

If Jones lost his independent status at about the time of the A.P.I. convention in November 1952, the elaborate argument which Cities makes in its final point has only

momentary significance from Cities' point of view; it can be taken to infer only that up to September 18, 1952, Jones was still a free agent. On the other hand, it reinforces plaintiff's argument that Jones recognized and reached for an opportunity of breathtaking proportions, and still had his grasp on it as late as September 18, 1952.

Much more could be said about Cities' Submission but surely no more is necessary to demonstrate that it will not support a motion for summary judgment.

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 14 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 23

FIRST NATIONAL BANK OF ARIZONA, as successor executor of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

v.

CITIES SERVICE CO.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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The following statement of the way this summary judgment was entered is sufficient, I think, to show the gross error of the Court's affirmance of the judgment.

In 1956 petitioner Waldron [1] brought suit against the Standard Oil Company (New Jersey) and six other major oil companies including Cities Service Co., the respondent here. The complaint alleged a general conspiracy beginning in 1928 on the part of all the defendants but Cities. It was alleged that Cities joined the conspiracy after the Government of Iran nationalized the properties of the Anglo-Iranian Oil Company in May 1951, and that the defendants conspired together to prevent petitioner Waldron from selling any of the Iranian oil. To carry out the boycott the alleged conspirators threatened all other companies with dire economic consequences if they dealt in the Iranian oil. Despite these threats, Cities, which did not control sources of oil adequate to supply its customers and which therefore had been compelled to buy from the major companies, expressed to petitioner a desire to obtain Iranian oil. Petitioner was offering to sell the Iranian oil on very attractive terms, and Cities agreed to go to Iran in order to evaluate the prospects, provided it received an invitation from Iranian Premier Mossadegh. Petitioner thereupon went to Iran, secured a written invitation from the Premier, and in due course the President of Cities Service, W. Alton Jones, went to Iran, taking with him other high Cities officials who, as experts, could help him appraise the possibilities of operating the old Iranian plants. Petitioner Waldron also went along. The investigation in Iran was made, but during the trip, Jones made a secret side-trip to Kuwait to pursue negotiations for buying oil from Gulf

[1] The original plaintiff Waldron, like several crucial witnesses in this case, is dead and this appeal is now being carried on by his executor. For the sake of clarity I will refer to the original plaintiff Waldron as the petitioner here.

Oil, one of the alleged conspirators. Jones' associates did not accompany him on this trip to Kuwait, and Cities made every effort to conceal the secret visit from petitioner. In fact, as late as 1960, during the course of this lawsuit, Cities continued to deny that Jones had ever gone to Kuwait while on the Iranian trip; the fact was not finally revealed until 1964 when petitioner was at last permitted to question some of the Cities officials who had been involved in the Iranian trip.

After the trip to Iran, Cities officials prepared a memorandum reporting favorably on the prospects for using Iranian oil, but then in October 1952 Cities abruptly informed Waldron that it had no further interest in the Iranian oil which petitioner was offering on such favorable terms. The intense pressure to which Cities was being subjected at this time by the major companies is suggested by an incident that occurred only a month later at the annual convention of the American Petroleum Institute. Jones, President of Cities, had been slated to receive the Institute's gold medal for being selected oil man of the year, but at the meetings representatives of the major companies threatened Jones that they would cut off Cities' supplies of its sorely needed crude oil if he dealt further in Iranian oil, and he was not presented with the gold medal. Three months later the agreement between Cities and Gulf for the purchase of the Kuwait oil was formally executed. Then, after petitioner's efforts to sell the Iranian oil had completely failed, the Iranian Government was forced to agree to turn over the nationalized properties to a Consortium of the major oil companies, and Cities was granted a small share in the Consortium.

Petitioner's antitrust complaint charged that Cities, which previously had eagerly pursued the prospect of purchasing Iranian oil, had changed its views and had foregone its chance to make the "billions" that Jones had

foreseen, in order to get the Kuwait oil and membership in the Consortium. After the complaint was filed, Cities examined petitioner at length, at the same time getting the court to postpone its time for answering the complaint until after these examinations could be completed. Then Cities filed affidavits charging that petitioner's allegations about the Kuwait and Consortium deals had no basis in fact and moving for summary judgment. The court deferred ruling on the summary judgment motion but at the same time refused to permit petitioner to obtain general discovery to enable him to prove his case aganst Cities: instead the court authorized a limited discovery relating only to the Kuwait purchase and the Consortium arrangement; petitioner's inquiry was also sharply limited both as to the subject matter and the time period of any transactions that could be questioned. At the same time the court refused to permit petitioner to take the deposition of Jones and those of his associates who had the greatest opportunity to know the reasons for the drastic change in Cities' attitude on buying Iranian oil. The Court instead ordered that only George H. Hill, a Cities vice-president who had never met petitioner or known anything about the Iranian oil deal but who had been in charge of negotiating the Kuwait deal and who had led Cities' attempts to obtain a share in the Consortium, would be required to answer petitioner's questions.

After taking the deposition of Hill, petitioner filed an amended complaint which eliminated his specific reliance on the Kuwait and Consortium deals and stressed generally that Cities' participation in the conspiracy had been obtained by threats and inducements from the principal conspirators. The court again postponed a ruling on Cities' motion for summary judgment, and ordered that petitioner be permitted to make some further discovery, but once again the scope of discovery permitted

to petitioner was sharply limited. In addition, Cities' president Jones had died during the period when petitioner was restricted by the court's order to taking only the deposition of Hill, and thus petitioner was never able to question the one man who was the crucial figure in the alleged Iranian transactions. Of the seven other Cities officials who had been involved in these transactions, three had also died during the long period in which the court had stayed petitioner from taking their depositions.

In spite of the fact that petitioner had amassed considerable evidence of Cities' liability, in spite of the fact that Cities had been given unrestricted freedom to question petitioner while petitioner was barred from getting any information at all from Cities employees familiar with the Iranian transactions, in spite of the fact that the discovery eventually allowed to petitioner had been sharply restricted, in spite of the fact that petitioner never had an opportunity to question four of the eight Cities officials who had been most intimately connected with the alleged transactions, and in spite of the fact that Cities had never been required to answer the allegations of the complaint, the court entered summary judgment for Cities in September 1965. 38 F. R. D. 170 (1965). The Court of Appeals, in a short, uninformative opinion, affirmed the decision of the District Court. 361 F. 2d 671 (C. A. 2d Cir., 1966).

I.

The Court's action in affirming this judgment cannot possibly be reconciled with this Court's holding in *Poller* v. *Columbia Broadcasting Co., supra.* There the Court warned against using summary judgments to decide complex antitrust litigation where motive and intent play leading roles. This is just such a case. Its complexity is such that even with a summary judgment it took 11 years to end it. Literally months and years were spent

in examining plaintiff, in getting affidavits and holding numerous hearings. It is little less than farcical to treat a case that eats up that much time as one suitable for a summary judgment. It certainly would not have taken one-tenth of that much time to give the case a full-dress trial, where sworn testimony before a jury rather than affidavits presented to a judge could have been used to adjudicate plaintiff's rights in accordance with due process of law. An excuse for summary judgments has always been that they save time. If the time has come when the best speed record they can make is to take 11 years to decide one of them, the idea of summary judgments as time-savers is a snare and delusion and the best service that could be rendered in this field would be to abolish summary judgment procedures, root and branch. The plain fact is that this case illustrates that the summary judgment technique tempts judges to take over the jury trial of cases, thus depriving parties of their constitutional right to trial by jury.

It seems clear to me that even with petitioner's very limited opportunity to gather evidence in support of his case, there is ample evidence in this record from which a jury could conclude that respondent Cities did indeed join the alleged conspiracy. Petitioner established that Cities needed Middle East oil, that he was offering Iranian oil on very attractive terms, and that Cities had in a number of ways manifested its considerable interest in purchasing this oil. Suddenly, Cities announced to petitioner that it did not intend to pursue the deal any further, and in fact took steps to make more difficult petitioner's efforts to sell the oil to others.[2] This refusal

[2] Thus, Cities' president, Jones, instructed an associate to cable the Secretary of the Interior to advise the United States Government against purchasing gasoline from petitioner for military use. Although in the Court's view this cable was "primarily" designed to

to deal could of course be explained by a number of motivations, but petitioner contends that this record raises the significant possibility that Cities action was predominantly motivated not by legitimate business considerations but rather by a decision to join the alleged conspiracy, induced either by threats of the conspirators or by a payoff in the form of the Kuwait and Consortium deals. The Court rejects each of these theories, although for sharply contrasting reasons, and concludes that despite the possible illegitimate motivations, evidence now in the record suggests that other motivations were, in the Court's opinion, more probable. As I have already indicated, I could never accept this as the appropriate standard, under *Poller, supra,* for determining whether a defendant in a case such as this is entitled to summary judgment.

II.

The Court in this case has deprived plaintiff of his right to discovery on highly technical and wholly indefensible grounds. The heart of the complaint here was that Cities Service and others conspired to boycott plaintiff's sale of Iranian oil by use of threats and monopoly power in violation of the antitrust acts. Rule 56 (e) comprehensively provides for the use of depositions and affidavits, and Rule 56 (f) provides that where it appears that affidavits are unavailable the Court may refuse the application for summary judgment, or may order a continuance to permit affidavits to be obtained, or make such other order as is just. Thus it appears that the

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disassociate Jones from petitioner's efforts to promote the sale, *ante,* p. 27, this is certainly a rather narrow view of a cable that explicitly states, "I seriously question wisdom of such action." In any event I cannot understand how this Court can justify taking from the jury the responsibility for judging the primary purpose and effect of a piece of evidence such as this.

rules contemplate that a party may not be shut off from an opportunity to get affidavits to give him his day in court. No judge is granted power under Rule 56 or any other rule to completely deny a party all opportunity to take depositions or to get affidavits essentially needed to get a fair trial of his case. Such a course of conduct cannot possibly be called "just" within the meaning of Rule 56 (f), and yet here this plaintiff, over a course of years, repeatedly pleaded with the district judge for an opportunity to examine Jones and other Cities Service employees particularly familiar with the Iranian oil deal in order to present facts he had no other way to obtain. Of course, a party who is suing a company and who is dependent for proof on company employees must have the force of the law behind him or he cannot get testimony from such employees against their company. That the rule makers did not intend any such burdens to be imposed upon discovery is also shown by Rule 27, which even authorizes depositions to be taken, before any suit is filed, by any person who fears or expects that he may be a party to an action.

The excuse given by the trial court for cutting off plaintiff's right to discovery here will not hold water. It was that by pleading at one time that there were two possible reasons for Cities joining the conspiracy to boycott, he was perforce eternally barred from examining the defendants about any reasons other than those two in order to get more complete information as to why they conspired. To uphold this view of the District Court is to treat a lawsuit as a game in which the party who gets there first with the most questions wins the game. But lawsuits are not games. The end of each one of them, if courts remain true to the ancient traditions of justice, is to try each case in a way that permits truth to triumph. That has not been done here. This

petitioner was and is yet entitled to examine the Cities Service employees still living who know about this case. Law and justice require it. Too much time has already been wasted in an effort to provide a summary disposition of a case that should not be disposed of that way.

I would reverse the case and direct that it go to trial.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 23

FIRST NATIONAL BANK OF ARIZONA, as successor executor of the last will and testament of GERALD B. WALDRON, Deceased,

Petitioner,

v.

CITIES SERVICE CO.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

Petitioner prays that this Court grant rehearing of its decision of May 20, 1968, which affirmed the entry of summary judgment in favor of respondent.

Reasons for Granting Rehearing

Petitioner respectfully directs the Court's attention to a substantial error in the Court's review of the record which caused the Court, as a matter of appellate procedure, to refuse to consider evidence of conspiracy creating a genuine issue of fact; to the fact that the Court's ruling represents a significant departure from its earlier summary judgment decisions; and to the Court's failure to consider petitioner's unsuccessful attempts to obtain Rule 26 discovery before Cities moved for summary judgment.

I.

The Court was mistaken in its belief that petitioner had not asserted below the theory that Cities was threatened into joining the conspiracy.

In footnote 16, pages 22-23, of the Court's opinion, the Court rejected petitioner's argument that an issue of fact exists as to whether Cities' participation in the conspiracy was obtained by threats of retaliation from the other defendants. The Court stated: "One searches in vain among petitioner's papers prior to argument in this Court for a single intelligible statement of this theory." As a consequence of this ruling, the Court refused to consider the compelling inference of conspiracy raised by the facts that W. Alton Jones was threatened with loss of Cities' needed oil supplies by the "Big Boys" at the American Petroleum Institute convention in November 1952 unless Cities declined to deal in Iranian oil; that Jones and Cities then declined to deal in Iranian oil and took a position in support of the Cartel members; and that Cities a month later entered a contract to purchase Kuwait oil from Gulf.

The Court was mistaken when it said that petitioner failed to make the argument to the lower courts that Cities was coerced into the conspiracy by threats from the other defendants. The theory and the facts in support of it were urged repeatedly upon the lower courts in briefs submitted by petitioner. Those briefs, containing only argument, were not included in the record before this Court since petitioner had no reason to suspect that the Court would doubt that the point was properly raised. Respondent never questioned it, not even before this Court. Indeed, not only did petitioner point out the significance of the threat made to Cities at the A.P.I con-

vention, but he also drew the attention of the district court to numerous other threats made against Cities when its interest in Iran was revealed.

The principal facts upon which the argument concerning threats is based, i.e., the public announcement by Anglo-Iranian that it would take action against any company which dealt in Iranian oil and the admission by an officer of Cities that Cities had been threatened with a boycott if it dealt in Iranian oil, were revealed in petitioner's deposition testimony before Cities moved for summary judgment. In petitioner's very first brief opposing summary judgment on May 6, 1960, he set forth the facts concerning the threats against Cities in language nearly identical to that used in his main brief to this Court:

> "Not long afterwards, Whetzel [sic] of Cities Service called plaintiff on the telephone and, in the course of the discussion, related that a medal had been prepared for Jones, to be presented to him at the American Petroleum Institute's annual convention in Chicago, but that because of Jones' trip to Iran the medal was not going to be given him. He said Jones was mad as a hornet and was going to talk to Mr. Eisenhower about it. Whetzel continued, 'The Big Boys called Mr. Jones in and told him that they hoped he got his Iranian oil. That they hoped he got all he wanted out and quickly because he wasn't going to get any more oil from them'. He concluded, 'You know, that could be disastrous' [Tr. 6337]." (Page 11).

At the oral argument of May 27, 1963, Judge Herlands attempted to summarize petitioner's position as being that:

> ". . . under the circumstances there is no other alternative but to assume that there was a conspiracy and that Cities Service was bought off in some way or other.

"Mr. Beshar [petitioner's counsel]: Bought off or frightened off. In any case, that they joined the conspiracy.

"The Court: All right." (R. 11834).

At the same argument, Judge Herlands asked petitioner's attorney to specify and itemize the pieces of evidence and other information which supported petitioner's request for further discovery or which established a genuine issue for trial (Oral Argument of May 27, 1963, R. 11837-39). On August 16, 1963, petitioner submitted a Memorandum of Facts, in response to Judge Herlands' request. The threats against Cities were heavily emphasized to support the inference that Cities had been coerced into the conspiracy.

At the beginning of the Memorandum of Facts, petitioner listed as the first "genuine issue" requiring discovery the following:

> "I. Did defendant Cities Service give up its ambition to take over the Iranian oil installations under a management contract for which it would receive payment in crude oil because of threats or inducements by the other defendants and their co-conspirators?" (Page 9).

In support of his contention that whether Cities was threatened into joining the conspiracy raised an issue of fact, petitioner, in the same Memorandum, brought to Judge Herlands' attention the following:

> "Once again the British foreign office reiterated its threat that 'all possible steps will be taken against W. Alton Jones, American oil executives, and any other oil operators if they buy "stolen oil from Iran"' (Herald-Tribune, September 30, 1952 'Britain Warns U. S. of Action if Jones Buys "Stolen" Iran Oil'" (Page 33).

* * * * *

"In due times Jones came home to face a hostile oil industry. Plaintiff does not know whether Jones gave up his intention to seek a management contract from the Iranians before he came home or whether he was threatened or induced to do so after his return. The latter seems more likely in view of his statements to the press, *infra*. But one thing is clear: When he did get home, Jones caught hell from those called the Big Boys. A year before Jones had been Chairman of the Board of the influential American Petroleum Institute. The A.P.I. had, it is reported, voted to award Jones its highly prized annual gold medal as the outstanding oil man of the year. To Jones' intense anger and chagrin, the medal, supposedly already struck, was melted down and never presented to Jones because of the majors' resentment of his role in Iran.

"There were explicit threats as well. Whetsel, Head of Foreign Operations for Cities Service and one of the top executives who accompanied Mr. Jones to Iran, called Waldron after the third trip and reported:

> "'He [Whetsel] said the big boys had called Mr. Jones in and that they wished him well on his Iranian venture and hoped that he got all, all the oil he wanted soon, because he wasn't going to get any more oil from them' (Tr. 5655)." (Pages 36-37).

In his final brief submitted to Judge Herlands, petitioner put the issue as follows:

> "Further evidence of a conspiracy is Waldron's testimony that Whetsel, a Cities' officer, informed him that the 'Big Boys' threatened to withdraw Cities' source of supply of oil at the A.P.I. convention in November 1952 (6337). This testimony has never been contradicted by Cities." (Supplemental Memorandum, filed February 9, 1965, Page 7).

Petitioner maintained his position in the court of appeals, arguing that the threatened withdrawal of its supplies furnished good reason for Cities to join the conspiracy:

> "Plaintiff has shown that Jones spent five days on his way to Iran visiting Sandberg, a representative of one of the co-conspirators, and two days during his stay there to talk with representatives of A.I.O.C. and Gulf, two other co-conspirators. Thus, Cities had an opportunity to join the conspiracy. Cities was threatened with the withdrawal of future supplies of oil at a time when it was negotiating for a large purchase of oil from Gulf to help relieve its chronic shortage of crude oil. Thus, there was good reason for it to join in the conspiracy. Finally, Cities secretly interfered with Waldron's attempt to sell oil under his contract to the United States Government in the hope of breaking the blockade on Iranian oil, told Waldron that it was not interested in Iranian oil and rejected his offer to supply tankers. Thus, Cities took up the cause of the co-conspirators. From this evidence, which demonstrates opportunity, motive, and a course of conduct injurious to plaintiff, a rational inference may be drawn that Cities' otherwise unexplained failure to proceed with its proposal to assist Iran and improve its own position was the result of having agreed with the co-conspirators that it would refuse to deal with the Iranians or anyone who attempted to sell their oil. On this motion for summary judgment, this inference must be drawn." (Plaintiff-Appellant's Br., Point I, pages 40-41).

The threat of a boycott of Cities' supplies, admitted by Whetsel, an officer of Cities, along with the many other threats which were directed at Cities once its interest in

Iranian oil became known to the other defendants, provides the element of motive for Cities' decision to walk away from Iran.

The Court's action in eliminating the fact of petitioner's repeated statements of the threats and the theory of conspiracy by threat appears to petitioner to have had a crucial effect on the Court's consideration of the case:

> (a) Only by taking the position that such statements and theory were not presented to the lower courts could the Court say that "In these circumstances we cannot attribute error to the courts below for their failure to discern such a theory . . . ." (Opinion, p. 23, n. 16).
>
> (b) Only because it was unaware of the contents of the briefs below could the Court say that there is not "a single intelligible statement of this theory." (*Ibid.*).
>
> (c) Only by refusing to consider the fact of the threats and the theory of conspiracy by threat can the Court say that ". . . more extended discovery under Rule 56(f) of Cities' activities subsequent to its refusal to deal with him would have been proper" but for petitioner's failure to introduce ". . . some significant evidence that Cities had become a member of the conspiracy. . . ." (Opinion, p. 40).
>
> (d) Only by eliminating the threats and the theory of conspiracy by threat from petitioner's case could the Court conclude that the inference that Cities' failure to deal was the product of factors other than conspiracy is "more probable" (Opinion, p. 23) than the inference of conspiracy.

From the very outset of Cities' motion, petitioner directed the attention of the courts below to the threats made against Cities and argued that from those facts together with the sequence of events which surrounded them an

inference could be drawn that Cities had been coerced into joining the conspiracy. Petitioner respectfully submits that the Court was mistaken in refusing to consider these crucial facts.

II.

The Court has departed from its earlier summary judgment decisions by weighing several permissible inferences and then adopting one of them.

Heretofore, this Court has adhered to the principle that "On summary judgment the inferences to be drawn from the underlying facts contained in [the affidavits, attached exhibits, and depositions submitted below] must be viewed in the light most favorable to the party opposing the motion." *United States* v. *Diebold, Inc.*, 369 U. S. 654, 655 (1962).

Rather than viewing the underlying facts presented by the record in the manner most favorable to petitioner, the Court elected to weigh the conflicting inferences and affirm the award of summary judgment because, in the Court's view, the inference of non-conspiracy was "more probable" than the inference of conspiracy. At pages 22-23 of its opinion, the Court stated:

> "Therefore, not only is the inference that Cities' failure to deal was the product of factors other than conspiracy at least equal to the inference that it was due to conspiracy, thus negating the probative force of the evidence showing such a failure, but the former inference is more probable."

The Court made similar appraisals of the facts elsewhere in its decision. At page 21, it stated:

> "It is thus clear that the evidence furnished by petitioner himself provides a much more compelling

> explanation for Cities' failure to purchase Iranian oil than does his argument that such failure is evidence of conspiratorial behavior by Cities."

And at page 26:

> "As for the probative value of the failure to deal with Waldron, the same objection is applicable to the proposed transaction with Richfield that has been discussed in connection with the proposed deal with Cities, namely, the probability that it was due to a desire to avoid difficulties that would be presented by Anglo-Iranian and the other defendants. Moreover, since petitioner's contract had expired by the time the deal fell through it is also possible that no agreement was reached because Waldron no longer had anything to offer. Therefore, the failure of petitioner to sell oil to Richfield adds nothing to his case against Cities."

And at page 27:

> "Under those circumstances, what petitioner characterizes as vindictive interference by Jones appears far more likely to have been a desire not to be used in someone else's financial dealings."

The trial judge in *United States* v. *Diebold, Inc., supra,* also followed the inference which to him appeared "more probable." Nevertheless, this Court unanimously reversed his decision because, viewing the facts in the light most favorable to the party opposing summary judgment, inferences contrary to those drawn by the trial court "might be permissible." 369 U. S. at 655. The inference that Cities joined the conspiracy alleged in the case at bar is not merely "permissible," but, particularly when Cities' action is viewed in the light of the threats made against it by the other defendants, the inference of conspiracy is quite probable.

Only by taking up the role of the jury and weighing the conflicting inferences which are permissible from the record could the Court conclude that there is no genuine issue as to whether Cities joined the conspiracy. Such a weighing of the evidence is inconsistent with the Court's earlier pronouncements concerning the role to be played by a court in deciding a motion for summary judgment. Previously, the choice of inferences has been reserved for the jury. *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U. S. 464, 473 (1962); *Sartor* v. *Arkansas Gas Corp.*, 321 U. S. 620, 628 (1944), quoting from *Aetna Life Ins. Co.* v. *Ward*, 140 U. S. 76, 78 (1891). See also, 6 Moore, Federal Practice §56.23, at 2856 (2d ed. 1966).

III.

The Court overlooked the district court's denials of petitioner's attempts to obtain Rule 26 discovery before Cities moved for summary judgment.

Finally, the Court was mistaken when, after equating Rule 56(f) discovery with limited discovery, it said:

> "Petitioner conceded below that his discovery should proceed under Rule 56(f) rather than Rule 26." (Opinion, p. 41, n. 23).

Petitioner never conceded that he was not entitled to full Rule 26 discovery. He claimed that right in the district court, but it was denied to him in an order not subject to immediate review (R. 11051-56). Thereafter, he contended for the same broad discovery under Rule 56(f) when Cities made its motion for summary judgment (Tr. Vol. III, 81, 118). Again, he was denied his right (Tr. Vol. I, 69a).

On appeal in this Court, petitioner asserted as a separate error the district court's refusal in its 1958 order to lift the stay on his discovery imposed, over petitioner's objections, in 1956 (Petitioner's Br., p. 46). When Cities made its motion for summary judgment in 1960, petitioner was in the unique position of a plaintiff of four years' standing without any discovery, general or limited. Petitioner asserts that, before his case was put to the test of summary judgment, he should have been allowed the full sweep of discovery accorded as a matter of right to all federal litigants. To the extent that he had been unable to get that discovery under Rule 26 before the summary judgment motion, fairness required that the court grant him full discovery under Rule 56(f) after the motion on the issue raised by the motion. That issue, as the Court realized (Opinion, p. 31), was the existence of a conspiracy.

Under the Court's decision as it now stands, Rule 56 may be utilized by any defendant as a means of unjustly preventing the plaintiff from exercising his right to full discovery. All he has to do is to make a summary judgment motion at the outset of the case or, as in the case at bar, prevail upon the court to stay plaintiff's discovery while the plaintiff is examined at length and then move for summary judgment before plaintiff has an opportunity to conduct any general discovery on his own behalf. If the plaintiff then moves for discovery under Rule 56(f), as he must, his motion under that rule can be used as a concession that he is not entitled to full disclosure. This, we submit, was not the intention of the draftsmen of Rule 56.

When petitioner's counsel asked for discovery under Rule 56(f) in 1960, he was constrained to do so by the 1958 order which continued the 1956 stay of his discovery. The scope of the discovery for which he asked at every opportunity was the full discovery to which he was entitled under Rule 26. It should have been accorded to him.

CONCLUSION

For the reasons set forth above and in petitioner's main briefs, it is respectfully urged that rehearing be granted and that upon such rehearing, the judgment below be reversed.

Respectfully submitted,

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Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

WILLIAM E. KELLY
Counsel for Petitioner

SUPREME COURT OF THE UNITED STATES

No. 23.—October Term, 1967.

First National Bank of Arizona, etc., Petitioner, *v.* Cities Service Co.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May 20, 1968.]

Mr. Justice Marshall delivered the opinion of the Court.

At issue in this case is the propriety of an award of summary judgment in favor of respondent Cities Service in a treble-damage antitrust action. The District Court held there was no genuine issue as to material facts between the parties and that respondent was entitled to judgment as a matter of law. 38 F. R. D. 170 (D. C. S. D. N. Y. 1965). The Court of Appeals for the Second Circuit affirmed. 361 F. 2d 671 (1966). This Court granted certiorari, 385 U. S. 1024 (1967), to determine whether the decisions below were in conformity with *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U. S. 464 (1962). We conclude that *Poller* and other decisions of this Court were correctly applied and, accordingly, we affirm.

Because the question whether summary judgment is appropriate in any case is one to be decided upon the particular facts of that case, we shall set forth the background of this litigation in some detail (Part I) before turning to the specific issues petitioner raises (Parts II–V).

I.

On June 11, 1956, petitioner Waldron [1] filed a private antitrust complaint in the Southern District of New

[1] Plaintiff, Gerald B. Waldron, died in November 1964. His executor has been substituted as the petitioner. We shall refer

York against seven large oil companies: British Petroleum Co., Ltd. (formerly Anglo-Iranian Oil Co.), Gulf Oil Corp.,[2] Socony Mobil Oil Co., Standard Oil Co. of California, Standard Oil Co. of New Jersey, The Texas Co., and Cities Service Co. The complaint contained essentially two series of allegations. The first was copied from the complaint in a then-pending civil action by the United States against those defendants other than Cities Service, alleging the formation and maintenance by them of a worldwide oil cartel since 1928. The second series of allegations dealt specifically with a conspiracy claimed to have been entered into at the time of the nationalization of the properties of the Anglo-Iranian Oil Co. by the Government of Iran in May 1951. The defendants other than Cities Service, it was asserted, agreed at that time to boycott Iranian oil in all world markets until Iran should agree to return Anglo-Iranian's property and concession rights. While the dispute between Anglo-Iranian and the Iranian Government under Premier Mossadegh was still continuing, Waldron and some of his associates allegedly succeeded in obtaining a contract to purchase 15,000,000 metric tons of crude oil or refined products from the National Iranian Oil Co. (NIOC), the company formed to take over Anglo-Iranian's nationalized properties, over a five-year period at a rate substantially less than the then current posted price for Persian Gulf oil. NIOC in return agreed not to deal with anybody other than Waldron in the United States market.

The complaint next stated that the defendants other than Cities Service conspired to prevent petitioner from

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to both Waldron and the executor as "petitioner" or "Waldron" interchangeably.

[2] Gulf subsequently settled with petitioner and is no longer a party defendant, although it remains as an alleged co-conspirator.

selling any of the oil to which he was entitled under his contract with NIOC. It was further alleged that Cities Service, after first engaging in extensive negotiations with Waldron with an eye towards participating in the operation of the Iranian oil industry, broke off dealing and joined the conspiracy to boycott him as a result of having received what amounted to a bribe from Gulf and Anglo-Iranian, namely, a large supply of oil from Kuwait at a price even lower than that petitioner could offer Cities pursuant to his contract with NIOC. Finally, the defendants were alleged to have entered into a Consortium Agreement in 1954, pursuant to their attempt to monopolize Middle East oil production, which parceled out substantially all the Iranian oil production between them. Cities Service was claimed to have been permitted to purchase a share in the Consortium. Petitioner asserted that the boycott conspiracy carried out by all the defendants completely frustrated his ability to sell oil under his contract and accordingly sought treble damages from them in the amount of $109,000,000.

Within the time set for the defendants to answer the complaint, various of them moved to take petitioner's deposition, and all of them moved to postpone the filing of their answers until the completion of that deposition. The motions were accompanied by affidavits of counsel that the legal questions presented by the complaint were extraordinarily complex and that they had insufficient information about petitioner's business dealings with the Iranian Government to permit them adequately to prepare their clients' answers within the 20-day time limit set by Rule 12 (a) of the Federal Rules of Civil Procedure. These motions were granted by Judge Weinfeld, who, in addition, stayed petitioner from any discovery of his own until completion of the defendants' discovery,

apparently pursuant to then existing practice in the Southern District.[3]

The deposition of Waldron commenced on September 10, 1956, and continued until July 3, 1957, at which time petitioner's counsel announced his intention to limit further examination. Nothing further was done by any party until December 30, 1957, at which time a motion was made to terminate the taking of Waldron's deposition. By this time 62 days of testimony had been taken over a period of more than 15 months. All adjournments up to this point were either at Waldron's request or with his consent. Meanwhile, various of the defendants had noticed the depositions of petitioner's associates, Richard S. Nelson, James A. Bentley, James E. Zoes, Ray Carter, and Addison Brown, in October and November of 1956. Pursuant to successive stipulations entered into between petitioner and the defendants, the taking of these depositions had been postponed up to the date of petitioner's motion to terminate the taking of his own deposition. In that motion petitioner also moved to vacate the notices to take depositions of his associates.

In response to petitioner's claims that the protracted examination of him by the defendants constituted harassment and an undue burden on him, the defendants pointed out that only one of their number had as yet examined Waldron and that the length of time over which the examination had proceeded had been with his complete acquiescence. As for petitioner's financial hardship contention, the defendants suggested that, in view of the damages sought by petitioner, it was not inappropriate that he be required to spend considerable time clarifying his claims before trial. Judge Herlands

[3] This practice has since been changed by rule. See 4 Moore, Federal Practice ¶ 26.13 (3), at 1154 (2d ed. 1966).

denied the motion on February 11, 1958, after argument; he ordered, however, that further examination of the petitioner by the seven defendants be limited to 52 working days, of which 10 were allotted to respondent Cities Service. In addition 174½ days were scheduled for the examination of Waldron's five associates, of which 31 went to Cities Service. The examinations were to be consecutive and were set to commence on March 10, 1958, unless the parties agreed otherwise. The defendants were authorized to postpone the filing of their answers until 30 days after the completion of the depositions, and petitioner was stayed from undertaking any discovery proceedings of his own during that period.

Pursuant to stipulation the continued examination of petitioner did not resume until September 15, 1958, and was not terminated until October of 1959. Twenty-six days were spent deposing Waldron in the latter part of 1958 and only six days during all of 1959, of which 3½ were utilized by counsel for Cities Service. Petitioner's associates were deposed between January 1960 and April 1962 for 58 working days, of which 3½ were used by counsel for Cities Service. Waldron was then examined for one additional day in 1962.

Thus, between September 1956 and May 1962, a period of over 5½ years, Waldron and his associates were deposed for a total of 153 days, of which only seven days were attributable to Cities Service. The various stipulations that resulted in prolonging the period required for the taking of these depositions were all entered into either at the request, or with the agreement, of petitioner.

During the course of his deposition by Cities Service, Waldron stated that he had at first not attributed Cities' failure to conclude some sort of a deal with him for Iranian oil to its participation in the boycott. He explained that it was his discovery of Cities' purchase of

substantial amounts of Kuwait oil from Gulf, plus its subsequent participation in the 1954 Consortium, that prompted him to join it in his complaint as a member of the conspiracy. Accordingly, when Cities moved for summary judgment in its favor in 1960, it did so on the ground that the affidavit of Cities' Senior Vice President in Charge of Foreign Operations, George H. Hill, and the accompanying documents from Cities' files that were submitted in support of the motion conclusively disproved petitioner's theory that it had joined the alleged boycott conspiracy because it had been bought off by the other conspirators.

In brief, the documents demonstrated that Cities had been engaged in negotiations with Gulf[4] to purchase Kuwait crude oil since 1948, and that a substantially final agreement, although not the actual conclusion of a contract, had been reached on the proposed deal prior to the time petitioner first approached Cities.[5] As for the Consortium, the documents showed that Cities had only commenced negotiations with the defendants to obtain participation therein some two years after it was alleged to have joined the conspiracy and that the share it was eventually offered, over its strenuous objections, was so small that it transferred the share to the Richfield Oil Co., in which it held a minority stock interest.

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[4] Anglo-Iranian was a co-owner of the Kuwait Oil Co., the actual holder of the entire Kuwait oil concession, but does not appear to have participated in the negotiations with Cities.

[5] Petitioner argues that a "most-favored-nations clause" was inserted at the last minute for the benefit of Cities. The record reveals that the so-called clause was simply a unilateral declaration from Gulf in the form of a letter from its chairman of the board that in the event of future price changes its policy would be to give Cities the benefit of the better price.

In reply to Cities' motion, petitioner's counsel reiterated his contention that the course of dealings between Waldron and his associates, on the one hand, and various of Cities' executive personnel, especially its president, W. Alton Jones, on the other, raised an inference of conspiracy because the most probable conclusion to be drawn from Cities' decision to pass up the assertedly extremely beneficial deal proposed by petitioner, notwithstanding its need for additional supplies of imported oil, was that in some manner Cities either had been "reached" or had used its negotiations with Waldron as a means of forcing its way into the alleged Middle East oil cartel. Petitioner also suggested that Cities might well have made some sort of informal agreement with the other defendants concerning the Consortium that was not revealed by the documents and that Cities might have expected, at the time such an agreement was made, a more profitable share therein than it was eventually offered.

In response to these arguments, Judge Herlands, who had by this time been assigned to the case for all purposes, handed down a memorandum decision on March 30, 1961, postponing determination of Cities' motion for summary judgment. In his opinion Judge Herlands stated that it was "doubtful" whether any issue as to any material fact existed and that Cities had been named a defendant on mere "suspicion." Because he judged petitioner's claim against Cities "so insubstantial," he ruled that petitioner would not be given "carte blanche authority to conduct untrammeled pre-trial proceedings," but that such proceedings would be "closely regulated." Subsequently, Judge Herlands entered an order providing that petitioner was to be allowed to take the deposition of Hill, the Cities' executive who had been in charge of negotiating the Kuwait deal with Gulf

and who had also carried out Cities' attempts to secure a participation in the Consortium.

At the hearing in 1961 on the proposed order to implement the court's decision, counsel for Waldron asked to depose Cities' president Jones first. Contrary to what appears to be the position taken now, petitioner acknowledged and accepted Judge Herlands' order that his discovery of Cities was to be carried out pursuant to Rule 56 (f), Fed. Rules Civ. Proc., which provides for comparatively limited discovery for the purpose of showing facts sufficient to withstand a summary judgment motion, rather than Rule 26, which provides for broad pretrial discovery. Petitioner's sole objection to the proposed order was that Jones should be deposed rather than Hill.

In response to Judge Herlands' observation that Hill was the man who was in the best position to provide information about the two alleged facts relied on in the complaint to link Cities to the conspiracy, petitioner's counsel for the first time argued that the Kuwait deal and the Consortium agreement were not crucial to the case. While maintaining the position that those two items were significant, counsel stated that Cities' motive for entering the alleged conspiracy was basically irrelevant. He argued that the evidence showed that Cities had embarked on a course of dealing with Waldron and then inexplicably had broken it off, and that this sequence of events was in itself sufficient evidence of conspiracy to withstand summary judgment and to entitle petitioner to sufficient discovery to ascertain the reason for the breakoff.

This argument was rejected and the trial judge clearly stated that to withstand summary judgment petitioner would have to produce some factual evidence of conspiracy beyond Cities' mere failure to carry through on a deal for Iranian oil. The taking of Hill's deposition was scheduled, without objection by petitioner, to commence

upon the completion of the depositions of petitioner's associates.

More than a year then elapsed, during which time, again pursuant to stipulations between all the parties, only 25 days were spent taking the depositions of petitioner's associates. Immediately after the completion of these depositions, in response to motions to strike portions of the complaint made by various defendants other than Cities, petitioner announced his intention to amend his complaint and entered into a stipulation with the other parties extending their time to move or answer until 30 days after service on them of the amended complaint. This stipulation was entered into on June 1, 1962, approximately 30 days prior to the time by which, under Judge Herlands' previous order, the defendants would have been required to answer the complaint or move for summary judgment. Some five weeks later, at the request of petitioner's counsel, a new stipulation was entered into postponing the taking of Hill's deposition until September 10, 1962, and staying petitioner's undertaking to file an amended complaint pending completion of the Hill deposition.

Between September 10, 1962, and February 27, 1963, pursuant to stipulations between the parties, petitioner deposed Mr. Hill for a total of six working days. Then, at the beginning of May, petitioner moved for additional discovery. In response to this motion respondent Cities Service renewed its summary judgment motion in addition to opposing further discovery by petitioner. At oral argument on May 27, 1963, Judge Herlands reiterated his opinion that thus far Waldron was still unable to point to any facts tending to show that Cities had participated in the alleged conspiracy. Indeed, the deposition testimony of Hill, plus various additional documentary evidence supplied in connection therewith, had further disproved the Kuwait and Consortium pay-

off theories. This evidence showed that Cities had actively resisted formation of the Consortium by the other defendants, even to the extent of making approaches to the United States Government in the hope of securing its intervention in the situation.

While the respective motions were pending before Judge Herlands, petitioner on June 28, 1963, filed an amended complaint. It differed from the original complaint in that most of the specific facts alleged in the original were replaced by more general allegations of conspiracy and boycott. In regard to Cities, the complaint was amended to omit all reference to any factual allegations involving either Kuwait oil or membership in the 1954 Consortium. In addition, those allegations of the original complaint which were directed at the other defendants and which had specifically excluded Cities were made more general, and the language excluding Cities was replaced by language referring simply to unspecified co-conspirators. In place of the previous specific allegations directed at Cities, the amended complaint substituted two new formulations: first, a general allegation that Cities joined the conspiracy at a time and in a manner not known to the plaintiff; and, second, that the other defendants and various of their co-conspirators "secretly threatened, induced and conspired with defendant Cities Service to break off all dealings with plaintiff."

Judge Herlands held petitioner's and Cities' cross-motions under advisement for a little more than a year while he considered motions for summary judgment against petitioner made by the other defendants. Then, on June 23, 1964, in a long and comprehensive opinion dealing with both sets of motions, he denied the motions for summary judgment made by the other defendants, again postponed final disposition of Cities' motion and

granted Waldron the opportunity to conduct further discovery of Cities under Rule 56 (f).[6] Presumably, decision on petitioner's motion was deferred so long because, had the motions of the defendants other than Cities for summary judgment been granted, petitioner's case against Cities would have also been terminated. In any event, the order implementing the decision permitted petitioner to depose all those members of Cities' executive staff then alive[7] whom he alleged to have participated at all in the dealings concerning Iranian oil, namely, Burl S. Watson, Cities' Chairman of the Board, Alfred P. Frame, Cities' First Vice President, and J. Edgar Heston, Cities' Manager of Oil Production. The order also directed Cities to produce all documents and memoranda relating to (a) the Kuwait and Consortium issues, (b) conversations and communications between it and any other defendant between June 11, 1952, and October 1, 1952, concerning petitioner, his associates, and Cities' dealings in connection with Iranian oil, (c) conversations and communications between Cities and any other defendant between June 11, 1953, and September 30, 1953, pertaining to negotiations between Waldron and the Richfield Oil Corp. concerning the purchase by Richfield of Iranian oil, and (d) conversations and communications between any deponent for Cities and any other Cities' employee involving the subject matter described in the preceding categories. The depositions of the three Cities' executives were completed during the months of July and August 1964 and in connection therewith more than 140 documents were produced.

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[6] 231 F. Supp. 72.

[7] Cities' President, W. Alton Jones, died in an airplane crash on March 1, 1962. Three other Cities' executives who had participated in varying degrees in Cities' exploration of the possibility of purchasing Iranian oil had also died by this time.

In September of 1964 petitioner moved for the following additional discovery: first, the production of all documents in the possession of Cities dealing with Cities' activities in connection with Iranian oil between June 1952 and January 1955; second, the production of all documents relating to the same subject matter in the possession of the other defendants; and third, the production of all relevant documents from, and oral examination of, Ray Carter, a former Cities employee who had acted as an intermediary between Cities and petitioner in their dealings. Petitioner further indicated a desire to depose various unspecified officials of the other defendants after the completion of the discovery detailed in his motion. Immediately thereafter, in October of 1964, Cities for the third time renewed its motion for summary judgment [8] and argument was had on both motions in February of 1965. Judge Herlands granted Cities' motion on September 8, 1965, holding that petitioner had failed to fulfill the requirement of amended Rule 56 (e) that a party opposing a properly supported summary judgment motion must produce by affidavit or otherwise "specific facts showing that there is a genuine issue for trial." [9] As to petitioner's cross-motion for additional discovery under Rule 56 (f), the court ruled that petitioner's total failure by that date to produce any evidence tending to show Cities' participation in a conspiracy to boycott him, despite considerable discovery, demonstrated that additional discovery would be merely

[8] Although petitioner's discovery motion preceded respondent's renewal of its summary judgment motion, it is evident that petitioner's motion was made with full knowledge that a renewal of respondent's motion would soon be forthcoming. In a very real sense it was thus a response to the summary judgment motion and was intended to serve as a ground for arguing that the motion should not be granted.

[9] 38 F. R. D. 170.

a fishing expedition and would unduly harass respondent. The Court of Appeals for the Second Circuit affirmed the judgment of the District Court in all particulars.[10]

Petitioner states that three questions are presented by this case: first, whether he was improperly limited in the discovery permitted him prior to the rendering of summary judgment (Parts II, V, *infra*); second, whether sufficient material facts to raise genuine issues for trial were shown (Part III, *infra*); and third, whether the lower courts held, erroneously, that amended Rule 56 (e), Fed. Rules Civ. Proc., places the burden of showing that there is a genuine issue of material fact for trial on the party opposing a motion for summary judgment (Part IV, *infra*).

II.

We turn first to one aspect of petitioner's contention that his discovery was unduly restricted: whether certain orders of the trial judge imposed unfair limits on his access to relevant information. The second aspect of petitioner's discovery argument, addressed to what he viewed as the necessity for additional discovery to enable him adequately to oppose the summary judgment motion, we shall discuss in Part V of the opinion.

Petitioner's initial complaint, as set out more fully, *supra*, pp. 2–3, specifically alleged that Cities had adhered to the conspiracy by refusing to deal with petitioner after being bought off by the Kuwait contract and an opportunity to participate in the Consortium. Similarly, in his deposition, Waldron reiterated his belief that the only links between Cities and the conspiracy were those two payoffs. Thus, by petitioner's own doing respondent Cities Service was from the beginning of the litigation placed in a vastly different position from the other alleged co-conspirators. Cities, realizing this, ap-

[10] 361 F. 2d 671 (1966).

parently felt that if it could show that it had in fact not received any payoff or bribe from the other defendants, petitioner would abandon his contention that it had joined the alleged conspiracy. Accordingly, immediately after it had taken Waldron's deposition, Cities made its motion for summary judgment accompanied by Hill's affidavit and the supporting documents described, *supra*, p. 6. When Judge Herlands declined to grant Cities' motion at that time, he permitted petitioner to examine Cities about those specific facts that had theretofore been the only ones alleged as evidence of conspiracy on the part of Cities, other than its failure to make a deal with petitioner for Iranian oil. Petitioner appears to argue that it was erroneous for the trial court to limit his discovery initially to Hill rather than Jones, the person with whom he primarily dealt. However, since petitioner was the party who had injected Kuwait and Consortium into the case and since Hill had been the ranking Cities official in charge of both transactions, it is difficult to conclude that the trial judge abused his discretion in ordering petitioner to begin by examining Hill.

Even assuming *arguendo* that it was error for petitioner to have been required to begin his discovery with Hill rather than Jones, the issue is moot for purposes of appellate review because Jones' accidental death occurred prior to the time petitioner would have been able to commence deposing him had he been permitted by Judge Herlands to do so. There is no reason to believe that petitioner would have made any greater efforts to see that the examination of his associates Bentley, Zoes, and Brown was carried out in less than the 13 months that were actually taken had he been scheduled to depose Jones at the end of that time rather than Hill. Obviously it was Jones' death, rather than any action taken

by Judge Herlands, that prevented his being deposed at some later date.

Although petitioner had begun to de-emphasize the significance of Kuwait and the Consortium to his claim of conspiracy by Cities at the first argument on Cities' motion for summary judgment, it was not until after the additional information described above was obtained through Hill's deposition, and the supporting documents accompanying it, that petitioner began to stress the contention that Cities had undergone a dramatic shift in its attitude towards him in September of 1952, immediately after Jones had returned from a trip to Iran arranged for him by Waldron. While it is probably to overstate the case to say, as does respondent, that petitioner abandoned his Kuwait and Consortium claims at this time, it is fair to say, that petitioner no longer seriously contended that the evidence relating to them was sufficient in itself to raise a genuine issue of material fact.

After again declining to grant Cities' motion for summary judgment, Judge Herlands entered an order permitting further discovery of Cities. It provided, as described in more detail *supra*, p. 11, for an examination of those Cities executives still alive who participated in the negotiations between petitioner, Cities, and the Government of Iran. It also directed the production of all documents in Cities' possession relating to any contemplated dealings in Iranian oil during the period of Waldron's active contact with Cities, *i. e.*, between June 11, 1952, and October 1, 1952.[11]

This order had the effect of permitting Waldron to examine every surviving Cities official with whom he had dealt to any substantial degree in his attempts to

[11] Documents covering internal Cities' discussion of these matters were also ordered to be produced for the period from October 1, 1952, to November 1, 1952.

arrange a sale of Iranian oil. He was permitted to examine them, and have production of all documents in connection therewith, concerning all the events that he had specified in his original complaint or in the two previous oral arguments on Cities' motion for summary judgment as being evidence of Cities participation in the alleged conspiracy. Certainly the scope of this order, viewed as of the time it was made, does not seem open to any serious challenge as unduly restrictive, and petitioner did not make any such argument at the time the order was proposed. It was only when petitioner moved for additional discovery in the fall of 1964 that he began seriously to complain about the allegedly limited scope of the prior discovery order. Accordingly, we shall postpone more detailed discussion of this point to Part V, *infra*.

Petitioner did argue then, and still contends now, that he was prejudiced by the failure of Judge Herlands to let him examine various other Cities executives, in addition to Jones, at the time he was permitted to depose Hill. He bases this contention on the ground that many of these executives were men of advanced years at that time and that the deaths that in fact ensued [12] could thus have been reasonably foreseen. The fallacy in this argument is that it was only after Hill testified that petitioner changed the focus of his argument before the trial judge to minimize the significance of Kuwait and Consortium and to suggest other possible motivations for Cities to conspire. Certainly Judge Herlands was not required to anticipate that petitioner would change the entire factual emphasis of his case in such a way that individuals who did not at the time appear to be particularly vital to the litigation would subsequently become so. Moreover, petitioner did not even ask to

[12] See n. 7, *supra*.

depose any Cities' official who subsequently died, other than Jones, at the time he was permitted to examine Hill. Therefore, petitioner's claim of prejudicial error here must fail also.

III.

In his affidavit in support of Waldron's motion for additional discovery, petitioner's attorney detailed the facts produced to date that assertedly showed Cities' participation in the conspiracy, in order both to support his contention that additional discovery was needed and to demonstrate that summary judgment in favor of Cities should not be granted. We shall first discuss the propriety of Judge Herlands' award of summary judgment before dealing further (in Part V) with petitioner's contentions relating to additional discovery.

A.

When petitioner moved for additional discovery in 1964, in opposition to Cities' still pending motion for summary judgment, his counsel's affidavit pointed to the following evidence as tending to show a participation by Cities in the alleged conspiracy [13] to boycott his attempts to resell the Iranian oil to which he allegedly had access under his contract. Cities had a need to import substantial amounts of crude oil for its domestic operations in the United States, this need amounting to some 100,000 barrels per day. Cities had theretofore been unable to obtain an independent oil supply in the Middle East despite its long-existing desire to do so. Through petitioner, Cities had two assertedly attrac-

[13] For the purpose of evaluating Waldron's case against Cities, his allegations about a conspiracy to boycott him carried out by the other defendants herein must be taken both as true and as legally sufficient. We, of course, intimate no opinion on the merits of petitioner's claims against the other defendants that are still pending below.

tive possibilities of fulfilling its crude oil needs. The first consisted of short-term purchases of Iranian oil at prices substantially below the going rates for Mideast oil via petitioner's contract with NIOC. The second, in which Cities was apparently more interested and on which tentative agreement with petitioner was allegedly reached, was for Cities to enter into a long-term arrangement to take over the operation of the entire Iranian oil industry (or a substantial portion thereof) in place of Anglo-Iranian, and to compensate Waldron for what would amount to a transfer of his contract rights.

The evidence further showed that Cities went to substantial lengths to explore the possibilities presented by petitioner. Waldron, at Jones' request, secured an invitation for Jones, together with other Cities executives, from Premier Mossadegh to go to Iran to look over the production factilities that NIOC had appropriated from Anglo-Iranian. Upon examination of the facilities, Cities' executives concluded that, notwithstanding the departure of the British personnel who had previously been in charge of operations, the Iranians had managed to keep them in relatively good operating condition. This conclusion was orally presented to Mossadegh by Jones and a comprehensive written report on specific details was promised to be transmitted later. During his stay in Iran, Jones also made a side trip to Kuwait to visit the Kuwait Oil Company, owned jointly by Anglo-Iranian and Gulf. On the return of the Cities party to the United States, Watson [14] informed petitioner in October of 1952 that Cities did not propose to take any steps relative to obtaining Iranian oil, although another Cities executive subsequently indicated to him that Cities had not entirely abandoned

[14] At this date Watson was Cities' senior vice president. He subsequently became chairman of the board.

its interest in his proposals. However, Cities had no further significant dealings with Waldron thereafter. Meanwhile on September 21, 1952, Carter, acting on petitioner's behalf, had sent a telegram to Secretary of the Interior Chapman offering to sell a cargo of Iranian-produced aviation gasoline to the United States Air Force. Carter stated that Jones had said that he would use his good offices to get the United States to purchase the gasoline. Instead, Jones cabled Watson instructions to tell Chapman that he was disassociating himself from Carter's efforts and that he questioned the wisdom of Carter's proposal. This Watson did.

Subsequently, in January of 1953, Jones wrote to the incoming Secretary of State and Attorney General informing them of his belief that the only solution to the Iranian oil problem would be some sort of agreement between Iran and Anglo-Iranian. He accompanied this missive with a legal memorandum which stated that under international law Iran appeared to have the right to nationalize the Anglo-Iranian oil properties, but he asserted that the memorandum had not been prepared as a step toward Cities' involving itself in the Iranian situation. Three weeks later the final contract with Gulf for a 15-year supply of 21,000 barrels per day of Kuwait oil, plus an option for an additional 30,000 barrels per day, was signed by Cities and Gulf.

Meanwhile Waldron continued his unsuccessful efforts to sell Iranian oil to various American companies. In particular, in June of 1953, he entered into extensive negotiations with the Richfield Oil Company, in which Cities had about a one-third interest. Although great interest was shown initially by Richfield, petitioner was told in September that it had decided not to purchase Iranian oil after all. Then, in 1954 the Consortium was set up to take back Anglo-Iranian's properties and con-

cession from NIOC, and Richfield obtained a share of about 1½% therein.[15]

Petitioner argues that the inference that Cities was a participant in the alleged conspiracy to boycott him follows from the foregoing facts. Even viewed without reference to other facts of record, it is apparent that petitioner's main argument is that Cities' failure to follow through on its original substantial interest in dealing with him is substantial evidence of participation in the boycott allegedly organized by the other defendants. And undoubtedly, given no contrary evidence, a jury question might well be presented as to Cities' motives in not dealing with Waldron, cf. *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U. S. 464 (1962), notwithstanding that such a failure to deal conceivably might also have resulted from a whole variety of non-conspiratorial motives involving the exercise of business judgment as to the attractiveness of the opportunity offered by petitioner. However, as we next show, the record in this case contains an overwhelming amount of such contrary evidence of Cities' motives, much of it supplied by petitioner himself.

B.

Immediately after the nationalization, Anglo-Iranian publicly announced both in the news media and throughout the oil industry its view that the nationalization of its properties and the abrogation of its concession rights amounted to an illegal act under international law and stated its intention to "take all such action as may be necessary to protect its rights in any country," including the bringing of lawsuits against any purchaser of Iranian

[15] This percentage was made up of the three equal shares initially awarded to Richfield, Cities, and the Sinclair Oil Corp. (Sinclair also held about a one-third stock interest in Richfield.) Cities and Sinclair both transferred their shares to Richfield, apparently for no consideration.

oil. In addition, the evidence introduced by petitioner tended to show that the other major oil company defendants in this suit, as a result of their fear that countries in which they held concessions would follow the Iranian lead should the nationalization of Anglo-Iranian's property be successful, also communicated to Cities and other domestic oil companies their intention to support Anglo-Iranian by refusing to deal with any company that handled Iranian oil. That such threats were both substantial and effective is demonstrated by the testimony of petitioner that numerous American oil companies, not made parties defendant in this action, refused to deal with him for precisely the reason that they were afraid of retaliation. In addition, petitioner testified that the other defendants had threatened to boycott any companies that leased tankers for use in transporting Iranian oil.

It is thus clear that the evidence furnished by petitioner himself provides a much more compelling explanation for Cities' failure to purchase Iranian oil than does his argument that such failure is evidence of conspiratorial behavior by Cities. When this explanation is placed in juxtaposition with the evidence introduced by Cities showing that the Kuwait deal was arranged long before the nationalization, that Cities objected continually to the formation of the Consortium, and that Cities refused the minimal share offered it as a prospective participant therein after the failure of its efforts to block the formation of the Consortium, the suggestion that Cities was in some manner bought off becomes insupportable. Petitioner attempts to escape the force of this showing by arguing that he is not obligated to demonstrate why Cities conspired but only to show that Cities in fact conspired. However, this contention, though undoubtedly true in the abstract, has little relevance to Waldron's theory of how he has introduced evidence that Cities in fact conspired.

Petitioner himself consistently argues that Cities' interests in this entire situation were directly opposed to those of the other defendants. The others had large supplies of foreign oil; Cities did not. The others allegedly were members of an international cartel to control foreign oil; Cities was not. The others were interested in re-establishing the status quo prior to nationalization; Cities was not. It is doubtless due to the difficulty of suggesting a motive for Cities to conspire against him, coupled with Cities' demonstrated interest in his proposals for several months (to the extent that Cities even paid Waldron several thousand dollars to reimburse him for his time and expenses incurred in arranging Jones' trip to Iran), that prompts petitioner, understandably enough, to insist that motive is not controlling in his case. However, to suggest, as petitioner does, that Cities' participation in the conspiracy is shown by its failure to deal with him is itself to rely on motive.

Obviously it would not have been evidence of conspiracy if Cities refused to deal with Waldron because the price at which he proposed to sell oil was in excess of that at which oil could be obtained from others. Therefore, it is only the attractiveness of petitioner's offer that makes failure to take it up suggestive of improper motives. However, it has been demonstrated above that for Cities to enter into any deal with Waldron for Iranian oil would have involved it in a variety of unpleasant consequences sufficient to deter it from making any such deal.[16] Therefore, not only is the inference

[16] In his brief in this Court petitioner drastically changes his theory of conspiracy. He now argues that Cities' participation in the conspiracy was obtained by threats of retaliation from the other defendants. While conceivably petitioner could have argued at the trial level that under such cases as *Klors, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U. S. 207 (1959), and *United States* v. *Parke,*

that Cities' failure to deal was the product of factors other than conspiracy at least equal to the inference that it was due to conspiracy, thus negating the probative force of the evidence showing such a failure, but the former inference is more probable.

Petitioner does attempt to point to other evidence besides the simple failure to deal as showing conspiracy.[17]

Davis & Co., 362 U. S. 29 (1960), acquiescence because of threats in an illegal scheme conceived and carried out by others for their own benefit makes the acquiescing party a member of an illegal combination, we decline to pass upon such a contention when it is presented for the first time in this Court. Although at one point in this complex and protracted case, which has thus far produced over 12,000 pages of record, the petitioner alleged that the other defendants have "secretly threatened, induced and conspired with defendant Cities Service to break off all dealings with plaintiff," this intimation of a coerced acquiescence theory was never properly pursued. *Klors* and *Parke, Davis* have not been cited or discussed by petitioner once in the entire course of these proceedings. One searches in vain among petitioner's papers prior to argument in this Court for a single intelligible statement of this theory. In these circumstances we cannot attribute error to the courts below for their failure to discern such a theory, nor would it be appropriate at this stage in the case for us to pass upon petitioner's theory of combination through coerced acquiescence and the accompanying difficult questions it would raise concerning Cities' liability to petitioner or possible rights over against the other defendants.

[17] Petitioner argues that Cities has thus far failed specifically to deny the allegations in his complaint charging it with conspiracy. In his original complaint petitioner charged that Cities "at this time and by these acts [referring to the Kuwait deal and the Consortium agreement] . . . entered into combination and conspiracy with the other defendants." Cities submitted an affidavit denying that Kuwait oil and a share in the Consortium had been given it as part of a conspiracy. In other words, Cities denied the factual allegations of petitioner but not the ultimate legal conclusion based thereon, namely conspiracy. A fair reading of that document requires that it be given its intended effect as a denial of petitioner's claim against Cities. Moreover, petitioner never made this argument in either of the lower courts (especially not in the

He places considerable reliance on the report prepared for transmission to Mossadegh in October of 1952, immediately after Jones' return from Iran and Watson's announcement to Waldron that Cities was no longer interested in Iranian oil. He stresses two aspects of the report as evidencing Cities' participation in the boycott: first, the statement that it was necessary for Iran to come to some sort of agreement with the British (Anglo-Iranian was owned 51% by the British Government) about compensation for the concession rights and expropriated property, and, second, the suggestion that there existed the possibility of an American company's (presumably Cities) importing some Iranian oil purchased directly from NIOC. It is interesting to note that petitioner attempts to use this memorandum in two opposing ways. He suggests, on the one hand, that the reference to the necessity for British cooperation if the Iranian oil industry were to be reactivated is evidence of Cities' adherence to the scheme initiated by Anglo-Iranian to force Iran to return the properties, and, on the other, that the statement that it would be possible for Iran to sell substantial amounts of oil without such an agree-

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District Court where Cities could have remedied any defects in the papers supporting its motion had they been pointed out in time) and we are not disposed to consider it now, particularly in light of its extreme technicality as applied to the facts of this case.

Petitioner also objects that only W. Alton Jones could have adequately denied the allegations of conspiracy and urges, therefore, that Cities' submission of such an affidavit from Hill rather than from Jones should be held against Cities as evidence of conspiracy. However, as previously pointed out, Hill was the natural person to respond to petitioner's factual allegations about Kuwait and the Consortium. See p. 14, *supra*. Contrary to petitioner's characterization of Hill as an attorney and an underling, Hill was an executive vice president of Cities, who had gone to law school many years before but who had not practiced law in a long time. As for petitioner's failure to examine Jones, that has been shown above to be due basically to his own lack of diligence. See also n. 20, *infra*.

ment is evidence of Cities' continued interest in Iranian oil. It is difficult to see how the latter contention supports an inference of conspiracy. Petitioner also ignores the fact that the latter alternative was characterized by Jones in the report as less desirable insofar as Iran's long-term interests were concerned, and that, with regard to Cities' participation in such an arrangement, Jones also stated that "development of some method, possibly through agreement between United States and British Governments, [would have to be made] that would allow Iranian crude to move to United States markets without tie-ups, law suits and other similar harassments to the purchasers of the crude."

Petitioner also emphasizes the statement sent by Jones to the incoming Secretary of State and Attorney General that the only solution for Iran lay in some sort of accommodation with the British. Since this was also the position taken, in effect, by the other alleged conspirators, petitioner suggests that it too shows common purpose. However, once Jones had decided that Cities could not risk trying to break the boycott itself, it was merely a factual observation to state that Iran would not be able to restore the operation of its oil industry without some kind of agreement being made with the boycotters. The use of the phraseology that this was the only "honorable course" hardly changes the factual background of the letter.

In addition, the statement is substantially similar to that made in the report intended to be sent to Premier Mossadegh on which petitioner relies to show Cities' continued interest in Iranian oil. Petitioner himself notes that the agreement contemplated in the report between Iran and Anglo-Iranian would involve an American company (hopefully Cities) taking over the operation of the oil industry, while Anglo-Iranian would be compensated for its property. Since Anglo-Iranian was insisting that

its property and concession rights be returned to it outright, and was rejecting proposals to substitute the payment of compensation therefor, this proposal by Jones is not reasonably susceptible to the interpretation sought to be placed on it by petitioner.

Moreover, the letter was accompanied by a legal memorandum, stating that Iran had a right under international law to nationalize its oil industry, that ran directly counter to the consistent position taken by the other defendants in this case. Indeed, it went to the heart of their defense, since one of the arguments being made below is that the other defendants were merely acting to protect their property rights. See 231 F. Supp., at 87.

Petitioner argues that the failure of the Richfield Oil Co. to deal with him is evidence of conspiracy by Cities because Cities was a major, although not a controlling, stockholder in Richfield. However, aside from Cities' stock interest in Richfield, petitioner has produced no evidence other than speculation to connect this failure to any action by Cities. As for the probative value of the failure to deal with Waldron, the same objection is applicable to the proposed transaction with Richfield that has been discussed in connection with the proposed deal with Cities, namely, the probability that it was due to a desire to avoid difficulties that would be presented by Anglo-Iranian and the other defendants. Moreover, since petitioner's contract had expired by the time the deal fell through, it is also possible that no agreement was reached because Waldron no longer had anything to offer. Therefore, the failure of petitioner to sell oil to Richfield adds nothing to his case against Cities.

Finally, petitioner places great reliance on Jones' alleged interference in his efforts to sell the United States Government a cargo of gasoline for military use. One difficulty with this contention is that the incident

occurred at a time when, petitioner conceded in the trial court, Cities was not yet a member of the conspiracy. A more basic objection to it, however, is that it is apparent that Jones, in his cable to the Secretary of the Interior, was primarily concerned with disassociating himself from Carter's efforts to promote the sale, efforts which Carter intended to tell the Secretary were supported by Jones. Under those circumstances, what petitioner characterizes as vindictive interference by Jones appears far more likely to have been a desire not to be used in someone else's financial dealings. In any event, it is insufficient support, in light of all the other evidence, on which to base a case for participation by Cities in the conspiracy.

C.

In support of his contention that summary judgment against him was improper, petitioner relies heavily upon *Poller* v. *Columbia Broadcasting System*, 368 U. S. 464 (1962). In *Poller* the plaintiff claimed that CBS canceled its affiliation agreement with his UHF station pursuant to a conspiracy between CBS and some third parties to drive him out of business in order to give CBS a short-term monopoly of the UHF market in the Milwaukee area, and ultimately to eliminate UHF competition there entirely. The plaintiff introduced evidence showing that CBS had canceled his affiliation, that it purchased and affiliated with another UHF station in competition with him, that he was driven out of business as a result of the competition with the other station, and that subsequently CBS terminated the operation of its station, thereby leaving the Milwaukee market without any UHF service at all. CBS in turn relied on evidence consisting largely of affidavits from, and depositions of, various of its executives asserting that the actions taken by it were the result not of conspiracy but of its legitimate business decision to enter into compe-

tition in the UHF market in the Milwaukee area. The basic issue between the parties, therefore, concerned the motives of CBS in canceling its affiliation with the plaintiff Poller. This Court held that where there was substantial factual evidence tending to show the existence of a conspiracy to eliminate a competitor and where the crucial question was motive, summary judgment was prematurely granted against the plaintiff, notwithstanding the fact that there was also substantial evidence tending to show the nonexistence of conspiratorial behavior.

At first glance the present case seems to present substantial similarities to the situation in *Poller* in that the issue as to Cities' motive in failing to conclude a deal with petitioner is likewise basic to the litigation here. However, there are crucial differences between the two cases. In *Poller* the competitive relationship between CBS and the plaintiff was such that it was plausible for the plaintiff to argue that CBS had embarked on a plan to drive him out of business. In this case, as Waldron has admitted right along, the business relationship between him, Cities, and the other defendants was such that it is much more plausible to believe that Cities' interests coincided, rather than conflicted, with those of petitioner. And, in fact, the course of dealings between petitioner and Cities over the strenuous objection of the other defendants gives ample evidence of precisely this similarity of interest. As Waldron himself candidly stated in the course of his deposition, he would not have originally included Cities as a coconspirator had he not conceived the idea that the ultimate failure of Cities to deal with him was the result of some sort of payoff. Yet as described, *supra*, pp. 6, 9–10, Cities has introduced overwhelming evidence that no such payoff was ever made or promised to it in return for an agreement not to deal with Waldron, a showing

which petitioner has in no way rebutted. Petitioner is thus forced to take the position that the one fact that he has produced, Cities' failure to make a deal with him for Iranian oil, is sufficiently probative of conspiracy to entitle him to resist summary judgment.

In support of this position, petitioner relies heavily on *Interstate Circuit, Inc.* v. *United States,* 306 U. S. 208 (1939), and *Theatre Enterprises, Inc.* v. *Paramount Film Distributing Corp.,* 346 U. S. 537 (1954). In *Interstate Circuit* a group of motion picture distributors, at the request of two large first-run exhibitors, simultaneously imposed identical restrictions on subsequent showings of the films they distributed. These restrictions had the effect of forcing subsequent-run exhibitors to raise their admission prices substantially in the direction of the prices then charged by the competing first-run exhibitors at whose behest the restrictions were imposed. This in turn tended to restrain competition among the exhibitors by depriving the subsequent-run exhibitors of much of their ability to compensate for their competitive disadvantages by selling tickets at a considerably lower price than that charged by the first-run exhibitors. Other restrictions prohibiting the showing of double-features in subsequent-run theatres were imposed with similar anticompetitive effects. There was no direct evidence showing that the distributors agreed with one another to impose the identical restrictions, but it was shown that each distributor knew that all the other distributors had been approached with the same proposal and that the imposition of the restrictions would be feasible only if adhered to by all distributors. Finally, it was shown that the identical action taken had the effect of creating a likelihood of increased profits for each distributor. This Court held that on the foregoing facts a tacit agreement to restrain competition between the disributors could properly be inferred.

Interstate Circuit differs from the case at hand in precisely the same way that *Poller* does, namely, in the inferences of motive that can reasonably be drawn from the facts. The reason that the absence of direct evidence of agreement in *Interstate Circuit* was not fatal is that the distributors all had the same motive to enter into a tacit agreement. Adherence to such an agreement would enable them to increase their royalties by forcing a rise in admission prices without the danger of competitors enlarging their share of the subsequent-run market by refusing to impose similar restrictions. That such a step would also aid the first-run exhibitors proposing it to restrain competition between themselves and subsequent-run exhibitors would not significantly diminish the anti-competitive benefits to be obtained by the distributors. Here Waldron is unable to point to any benefits to be obtained by Cities from refusing to deal with him and, therefore, the inference of conspiracy sought to be drawn from Cities' "parallel refusal to deal" [18] does not logically follow.

Theatre Enterprises, also relied on by petitioner, merely reiterated the holding of *Interstate Circuit* that "business behavior is admissible circumstantial evidence from which the fact finder may infer agreement," 346 U. S., at 540, in the course of ruling that the parallel behavior there shown did raise a conspiracy issue for the jury, which permissibly resolved it in the defendants' favor on the basis of the other contrary evidence in the case. It did not purport to deal with a situation where the interests of the parties whose behavior was "consciously parallel" were substantially divergent and thus is inapplicable here. Thus neither precedent nor logic

[18] See generally Turner, The Definition of Agreement Under the Sherman Act: Conscious Parallelism and Refusal To Deal, 75 Harv. L. Rev. 655 (1962).

supports petitioner's contention that the evidence to which he points is significantly probative of conspiracy and, therefore, we hold that on the facts as shown summary judgment was correctly awarded to respondent.

IV.

Rule 56 (e) of the Federal Rules of Civil Procedure states that "when a motion for summary judgment is made and supported . . . an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." Petitioner contends that the lower courts misapplied Rule 56 (e) in this case and erroneously placed the burden on him to show that there was a material issue of fact for trial, rather than first requiring respondent Cities Service, the movant, to demonstrate the absence of a "genuine issue as to any material fact" under Rule 56 (c). However, it should be noted that the decisions below did not purport to discuss burden of proof at all. Therefore petitioner must demonstrate that, regardless of what was specifically held, the effect of the decisions below was to so shift the burden of proof.

It is true that the issue of material fact required by Rule 56 (c) to be present to entitle a party to proceed to trial is not required to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial. The case at hand presents peculiar difficulties because the crucial issue of fact to petitioner's case is also an issue of law, namely the existence of a conspiracy. What Rule 56 (e) does make clear is that a party cannot rest on the allegations contained in his complaint in opposition to a properly supported sum-

mary judgment motion made against him.[19] Yet the analysis of the facts undertaken above demonstrates that, due to the absence of probative force of Cities' failure to deal with Waldron as being in itself evidence of conspiracy, petitioner's position is, in effect, that he is entitled to rest on the allegations of conspiracy contained in his pleadings. Thus petitioner repeatedly states that Cities has never disproved its participation in the alleged conspiracy, despite the fact that the only evidence of such participation is his allegation that the failure to deal resulted from conspiracy.

Essentially all the lower courts held in this case was that Rule 56 (e) placed upon Waldron the burden of producing evidence of the conspiracy he alleged only after respondent Cities Service conclusively showed that the facts upon which he relied to support his allegation were not susceptible to the interpretation which he sought to give them. That holding was correct. To the extent that petitioner's burden-of-proof argument can be interpreted to suggest that Rule 56 (e) should, in effect, be read out of antitrust cases and permit plaintiffs to get to a jury on the basis of the allegations in their complaints, coupled with the hope that something can be developed at trial in the way of evidence to support those allegations, we decline to accept it. While we recognize the importance of preserving litigants' rights to a trial on their claims, we are not prepared to extend those rights to the point of requiring that anyone who files an antitrust complaint setting forth a valid cause of action be

[19] Indeed it was for the precise purpose of overturning a line of cases in the Third Circuit holding that a party could successfully oppose summary judgment by relying on his well-pleaded allegations that Rule 56 (e) was amended in 1963. See 6 Moore, Federal Practice ¶ 56.22[2], at 2821 (2d ed. 1966).

entitled to a full-dress trial notwithstanding the absence of any significant probative evidence tending to support the complaint.

V.

We have postponed our discussion of petitioner's contention that he should have been permitted additional discovery prior to the grant of summary judgment to this point in order that it may be evaluated in the light of what he had succeeded in accomplishing as of the date he made the motion.

A.

Petitioner makes much of the fact that the present action has been pending in the lower courts for 11 years and that he has not yet received a formal answer to his complaint from any defendant nor been permitted any general discovery. Petitioner also complains of the inequity of his being faced with a motion for summary judgment after having been deposed for thousands of pages by the defendants, but before he has had an opportunity to obtain discovery from them. In particular, he emphasizes that in an antitrust conspiracy case discovery is vital because most of the evidence of conspiracy will naturally be in the hands of the defendants. However, petitioner fails to come to grips with the problems presented in this extremely complicated suit by the fact that one of the defendants, Cities Service, has from the begining of the litigation attempted to disassociate itself from the others on the ground that, as petitioner himself acknowledged and initially alleged, it was in a totally different position from the other defendants.

Thus when petitioner emphasizes the considerable discovery had of him by the defendants as a group, he implies that Cities has been unfairly permitted more discovery of him than he has of it. He attempts to minimize the significance of the fact that Cities' participation in his examination amounted to a total of 3½

days of deposition testimony by arguing that Cities benefited from the extensive examination conducted by the other defendants. The record reveals, however, that much of the evidence obtained by the other defendants in deposing petitioner and his associates is relied on heavily by petitioner himself to bolster his case against Cities. Had the record in this case consisted only of the evidence obtained by petitioner from Cities together with the testimony taken by Cities from Waldron, petitioner's case against Cities would be even weaker than it is. In fact, petitioner would undoubtedly have chosen to submit affidavits in opposition to Cities' motion for summary judgment containing much of the same material incorporated in his and his associates' depositions. Hence petitioner benefited as much *vis-à-vis* Cities from the depositions taken by the other defendants as Cities did. Under such circumstances petitioner cannot justifiably claim that Cities has been given an unfair advantage by the extent of his examination by the other defendants.

As for petitioner's general objections to the length of time that his case has been pending, it is clear that Cities Service has been the only party to the litigation that has exhibited any consistent desire to expedite the proceedings, and that, even where postponments and adjournments have been sought by either Cities or the other defendants, petitioner has always been willing to acquiesce in delay.[20] Certainly petitioner cannot claim that

[20] It must be remembered that the fact that approximately six years had elapsed between the date petitioner filed his complaint and the completion of the examination of petitioner and his associates is in no way the responsibility of the trial judge. Both parties had, as previously described, entered into numerous stipulations postponing the taking of depositions for months at a time. Petitioner argues that he cannot be penalized for not working full time at supplying the defendants with deposition testimony. This is certainly correct. However, petitioner cannot, by the same token,

it was the responsibility of the trial judge to hurry matters along by rejecting stipulations entered into by all the parties to the case.

Petitioner's more vehement objections have to do with his claim that he has been stayed from obtaining general discovery of the other defendants in the case throughout the period during which he has sought to build a case against Cities. Since there is no indication that petitioner will be unable to obtain general discovery at some future date of the other defendants for use against them in the case still pending below, the issue here is whether he can compel Cities to remain a party to the litigation pending such general discovery. Assuming the correctness of petitioner's claim that he has been stayed from conducting such discovery (a claim disputed not altogether unpersuasively by respondent), the fact remains that petitioner has had discovery of the one party he is presently opposing and, therefore, his right to additional discovery must depend on the strength of his argument that it is necessary to his case against that party.

While petitioner now asserts that he has been vigorously demanding discovery of the other defendants right along, the record reveals that back in 1960, on one of the occasions at which petitioner claims to have requested such discovery, his counsel stated, "I think the obvious place to begin is with Cities Service . . . and whether we need to go farther than that I don't know, and it would depend very much on what turned up there. . . ." It was only after two examinations of Cities Service personnel that petitioner finally made a formal motion

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attempt to penalize respondent for delays in which he acquiesced with no hint of objection. Certainly no one will contend that six years represents an example of the speed that a party interested in securing a swift resolution of his claims will require in order for himself and his associates to give 153 days of testimony.

for discovery of the other defendants in anticipation of Cities' renewal of its motion for summary judgment. In support of this motion petitioner was able to point to no significant evidence that he had turned up to show any dealings between Cities and the other defendants, other than the largely abandoned Kuwait oil transaction. His basic argument was, and is, simply the general proposition that in a conspiracy case the evidence is usually in the hands of the conspirators and that, therefore, he should have been permitted to examine the other alleged conspirators to see if he could obtain anything from them that would tend to link Cities to them.

It is probably true that in the ordinary conspiracy case a plaintiff would be entitled to obtain discovery against all the alleged conspirators instead of being obligated to proceed against them *seriatim*. However, in this case, by the plaintiff's own doing, one of the alleged conspirators was singled out from the rest as having joined the conspiracy at a much later date as the result of specific inducements. Being placed by petitioner's complaint in the position of being what might be termed a tangential defendant, Cities legitimately attempted to extricate itself from an expensive and protracted lawsuit. We do not mean to imply that a plaintiff should be barred from changing the theory of his case in response to information he obtains in the course of discovery. But when the evidence so obtained shows both that the defendant is in fact tangential and that the allegations by which he was linked to the other defendants are factually incorrect, we think that a burden should indeed be placed on the party changing his theory to show a significant likelihood that discovery of the other defendants would produce evidence different from that obtained thus far. In this case petitioner has only speculation as to what discovery of the other defendants would re-

veal about their relations with Cities Service, and not very persuasive speculation at that, since all the evidence thus far produced by any party on this subject supports the hypothesis that Cities was opposed to the other defendants rather than in collusion with them. Accordingly, it was not error on the part of Judge Herlands on these facts to deny that portion of petitioner's motion in opposition to summary judgment that requested general discovery of all the other defendants in this case.

B.

Petitioner acknowledges the fact that he has had some discovery of Cities Service pursuant to court order. However, he contends vigorously that the discovery he has obtained has been too limited to enable him adequately to resist the motion for summary judgment. Petitioner points out that he was initially limited to taking the deposition of Hill instead of Jones, notwithstanding the fact that Jones was the person at Cities with whom he primarily dealt with regard to the Iranian oil situation. He claims prejudice from the fact that Jones died before he could be deposed in that those Cities' personnel whom he eventually deposed, namely, Watson, Frame, and Heston, were not an adequate substitute for Jones. He also argues that he should have been allowed to depose Carter. Finally, petitioner asserts that his examination of the three executives was improperly limited in scope by Judge Herlands and that he should have been permitted general access to Cities' files for all documents in connection with Cities' activities in Iranian oil between the time he first approached Cities and 1955 in order to compensate for his inability to examine Jones.

It has already been observed [21] that the absence of testimony from Jones in this litigation is largely happen-

[21] See p. 14, *supra*.

stance, since there is absolutely no indication that Judge Herlands would not have permitted him to be deposed when Watson, Frame, and Heston were examined had he been available. In addition, while it is doubtless true that Jones, as president of Cities, could have testified more authoritatively with regard to certain of the questions concerning Cities' dealings in Iranian oil, petitioner's consistent attempt to portray those Cities executives who were deposed as uninformed underlings is substantially overstated. Notwithstanding some areas of ignorance, Watson, Frame, and Heston were privy to a considerable amount of information in connection with Cities' dealings both with Iran and with the other defendants. While Jones may have been the dominant figure in the Cities operation, it is simply unrealistic for petitioner to suggest that Jones could have involved Cities in a conspiracy on the scale of which is alleged to have existed here without any knowledge on the part of the other major executives of the company.

Petitioner's desire to depose Carter, which appeared for the first time in the litigation at this late date, is interesting in light of the fact that originally Carter had been listed as one of petitioner's associates and the defendants had formally noticed their intention to depose him in that capacity. Petitioner does not adequately explain why, if such were in fact the case, he required a court order to examine Carter, who was not an employee of Cities. It should be emphasized in this connection that so far as appears from the record petitioner has introduced absolutely no evidence on his own behalf in this case except the deposition testimony obtained from himself and his associates by the defendants and the testimony and documents obtained from Cities pursuant to Judge Herlands' various discovery orders.

Petitioner's counsel stated in his affidavit attached to the discovery motion that Carter became an adherent

of Cities immediately after petitioner filed his complaint and implied that Carter would not voluntarily testify. Assuming that to be true, although such an assumption seems open to question in view of the absence of any specific allegation to that effect, [22] no explanation is proffered as to why petitioner did not try to obtain discovery of Carter earlier if his testimony were thought necessary to petitioner's case. Petitioner was aware long before late 1964 that Cities was contending that it was not a member of any conspiracy that may have existed between the other defendants, and that it resisted being put to the expense of participating in what showed every sign of being an extremely protracted litigation. Given the fact that Judge Herlands had stated, in declining to grant Cities' original motion for summary judgment back in 1961, that he regarded petitioner's case against Cities as extremely weak, it seems quite proper to infer from the timing of petitioner's initial request to depose Carter that he did not regard Carter as someone whose testimony was significantly likely to help him resist a motion for summary judgment. On the contrary, the timing of the initial request suggests strongly that petitioner was more interested in establishing grounds on which to contend that Cities' motion for summary judgment should not yet be granted than he was in actually discovering what evidence Carter was in a position to furnish to him. There is no real indication, despite his arguments to the contrary, that petitioner obtained information in the course of his prior discovery that made Carter a more vital witness in 1964 than he would have been in 1961 or 1963.

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[22] In fact, the affidavit submitted by petitioner's counsel in support of his discovery motion is replete with references to the ill-use Carter allegedly suffered at the hands of Cities—rather an unpersuasive argument in support of the suggestion that in some way Cities had prevented Waldron from obtaining access to Carter.

As for petitioner's documentary requests, and his complaints about improper limitation of his previous discovery presented in support thereof, it is apparent that the time period to which they relate is in large part a period during which petitioner was no longer having any dealings with Cities. This is important because of two factors crucial to Waldron's conspiracy charge against respondent: first, petitioner argues that Cities joined the conspiracy when it refused to go through with a deal through him for Iranian oil, namely, in the latter part of 1952, and second, petitioner's contract with NIOC, the property right allegedly interfered with by the illegal boycott, expired in the spring of 1953. In addition, petitioner had at the time of this motion already obtained discovery of a very substantial number of documents having to do with Cities' dealings in Iranian oil prior to November 1, 1952, the latest point in time ever seriously suggested by petitioner for Cities to have joined the conspiracy.

In a proper case, of course, a party might well have the right to demand discovery of documents from an opposing party dealing with activities during a period outside that covered by the subject matter of the lawsuit in order to provide some indication of the ramifications of the actions forming the basis of the complaint. We do not doubt that, had petitioner introduced some significant evidence that Cities had become a member of the conspiracy alleged in his complaint, more extended discovery under Rule 56 (f) of Cities' activities subsequent to its refusal to deal with him would have been proper. Likewise, given sufficient evidence of conspiracy, broader access to Cities' files for the period within which petitioner had already had discovery would have been in order. But in this case petitioner was attempting, in effect, to obtain discovery of peripheral aspects of Cities' alleged participation in the conspiracy, after having

failed, despite already substantial discovery, to obtain any significant evidence of conspiracy for the period during which it was alleged to have directly injured him. It is precisely because the discovery obtainable under Rule 56 (f)[23] to oppose a motion for summary judgment would normally be less extensive in scope than the general discovery obtainable under Rule 26, that such a manner of proceeding was properly refused here.

Notwithstanding Waldron's complaints about the limitations placed on his discovery of materials and witnesses, it is evident that he has had a substantial enough amount of discovery either to substantiate his claims of conspiracy enough to raise a material issue of fact thereon, or to provide a basis for investigation of his own to gather additional evidence during the five years for which Cities' motion was pending below. The fact that petitioner accomplished neither of these ends with the discovery he obtained is ample support for the trial judge's determination that additional discovery would be futile and would merely operate to require Cities to participate further in litigation in which it had been originally joined solely on the basis of conjecture.

For the foregoing reasons we hold that summary judgment was properly awarded in the courts below to respondent.

Affirmed.

MR. JUSTICE DOUGLAS took no part in the decision of this case.

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[23] Petitioner conceded below that his discovery should proceed under Rule 56 (f) rather than Rule 26.

SUPREME COURT OF THE UNITED STATES

No. 23.—October Term, 1967.

First National Bank of Arizona, etc., Petitioner, *v.* Cities Service Co.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May 20, 1968.]

Mr. Justice Black, with whom The Chief Justice and Mr. Justice Brennan join, dissenting.

The Court here upholds a summary judgment against a plaintiff in a suit for treble damages under the Sherman Antitrust Act. The case is a complex one in which the summary judgment was entered 11 years after the action was brought. It is strange, indeed, that during the more than 11 years before the summary judgment was entered, the defendant should have enjoyed the luxury of never having been compelled by the court to answer the complaint, never having been required either to admit or deny the plaintiff's charges that the defendant had entered into a conspiracy to destroy plaintiff's business by boycotting it. There is one thing still stranger and more fantastic about the case; although the court permitted the defendants to interrogate the plaintiff for 153 days over a period of 5½ years, the same court refused during the 11 years to permit the plaintiff to ask any questions whatever of many of the defendant's officers and employees who were most familiar with transactions about which the plaintiff complained. And all this was done in the face of our holding in *Poller* v. *Columbia Broadcasting*, 368 U. S. 464, 473 (1962), that "summary procedures should be used sparingly in complex antitrust litigation" and that "[t]rial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'"